

HOUSE JOURNAL

SEVENTY-EIGHTH LEGISLATURE, REGULAR SESSION

PROCEEDINGS

THIRTY-EIGHTH DAY — TUESDAY, MARCH 25, 2003

The house met at 10 a.m. and was called to order by the speaker.

The roll of the house was called and a quorum was announced present (Record 90).

Present — Mr. Speaker; Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Campbell; Canales; Capelo; Casteel; Castro; Chavez; Chisum; Christian; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; Ellis; Farabee; Farrar; Flores; Flynn; Gallego; Gattis; Geren; Giddings; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hilderbran; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Lewis; Luna; Mabry; Madden; Marchant; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Mercer; Merritt; Miller; Moreno, J.; Moreno, P.; Morrison; Mowery; Naishtat; Nixon; Noriega; Oliveira; Olivo; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Reyna; Riddle; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Stick; Swinford; Talton; Taylor; Telford; Thompson; Truitt; Turner; Uresti; Van Arsdale; Villarreal; West; Wilson; Wise; Wohlgemuth; Wolens; Wong; Woolley; Zedler.

Absent — Alonzo; Bailey; Garza.

The invocation was offered by Pastor Bob Dees, First Christian Church, Baytown, as follows:

Our loving and gracious Lord, this morning we seek your living presence in this place and among the members of this house. The women and men of this place carry a heavy burden, Lord. The people of Texas have entrusted them with shaping the future of our state through the writing of laws and the crafting of public policy. But Lord, this is only part of their burden. They are also called to represent all the men, women, and children in their respective districts, provide a voice for the voiceless, and a visible witness to the reality of democracy at work in their lives.

Grant them, O Lord, the gift of wisdom to embrace truth, no matter how uncomfortable. Strengthen them to balance the scales of justice, no matter how difficult. Prepare them to lift high the torch of liberty, no matter how heavy. Create in them hearts of compassion and service. Empower them to serve all

your children within this great state with a deep sense of gratitude, a profound awareness of their obligations, and a spirit humbled by the trust you have placed in them as public servants.

By your grace and love, we offer this prayer. Amen.

CAPITOL PHYSICIAN

The speaker recognized Representative E. Jones who presented Dr. Heidi Chumley Jones of San Antonio as the "Doctor for the Day."

The house welcomed Dr. Jones and thanked her for her participation in the Physician of the Day Program sponsored by the Texas Academy of Family Physicians.

BILLS AND RESOLUTIONS SIGNED BY THE SPEAKER

Notice was given at this time that the speaker had signed bills and resolutions in the presence of the house (see the addendum to the daily journal, Signed by the Speaker, House List No. 17).

CAPITOL OPTOMETRIST

The speaker recognized Representative Casteel who presented Dr. Henry Hull of New Braunfels as the "Optometrist for the Day."

(Alonzo and Garza now present)

(Callegari in the chair)

MESSAGE FROM THE SENATE

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 1).

HCR 109 - ADOPTED

(by Lewis)

Representative Lewis moved to suspend all necessary rules to take up and consider at this time **HCR 109**.

The motion prevailed without objection.

The following resolution was laid before the house:

HCR 109, Recognizing March 25, 2003, as JPCA Day at the State Capitol.

HCR 109 was adopted without objection.

HR 592 - ADOPTED

(by Alonzo)

Representative Alonzo moved to suspend all necessary rules to take up and consider at this time **HR 592**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 592, Honoring Oak Cliff on the occasion of the 100th anniversary of its annexation to Dallas.

HR 592 was adopted without objection.

HR 521 - ADOPTED

(by Merritt)

Representative Merritt moved to suspend all necessary rules to take up and consider at this time **HR 521**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 521, Recognizing March 25, 2003, as Longview Day at the State Capitol.

HR 521 was adopted without objection.

On motion of Representative Goolsby, the names of all the members of the house were added to **HR 521** as signers thereof.

HR 548 - ADOPTED

(by Goodman)

Representative Goodman moved to suspend all necessary rules to take up and consider at this time **HR 548**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 548, Honoring Drs. John and Evelyn Billings on the 50th anniversary of the development of the Billings Ovulation Method of Natural Family Planning.

HR 548 was adopted without objection.

HR 546 - ADOPTED

(by Christian)

Representative Christian moved to suspend all necessary rules to take up and consider at this time **HR 546**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 546, Honoring Lonnie "Bo" Pilgrim, chairman of the board of Pilgrim's Pride Corporation.

HR 546 was adopted without objection.

INTRODUCTION OF GUESTS

The chair recognized Representative Christian who introduced Lonnie "Bo" Pilgrim and Cliff Butler.

HR 543 - ADOPTED
(by Kolkhorst)

Representative Kolkhorst moved to suspend all necessary rules to take up and consider at this time **HR 543**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 543, Recognizing March 25, 2003, as Washington County Day at the State Capitol.

HR 543 was adopted without objection.

INTRODUCTION OF GUESTS

The chair recognized Representative Kolkhorst who introduced a delegation from Washington County.

HR 515 - ADOPTED
(by Kolkhorst)

Representative Kolkhorst moved to suspend all necessary rules to take up and consider at this time **HR 515**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 515, Honoring Zach Riffett of Brenham on his achievements in the sport of soccer.

HR 515 was adopted without objection.

INTRODUCTION OF GUEST

The chair recognized Representative Kolkhorst who introduced Zach Riffett.

HR 591 - ADOPTED
(by Capelo)

Representative Capelo moved to suspend all necessary rules to take up and consider at this time **HR 591**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 591, Honoring Dr. Rene M. Rodriguez of Corpus Christi for his contributions to the community.

HR 591 was adopted without objection.

On motion of Representative Uresti, the names of all the members of the house were added to **HR 591** as signers thereof.

INTRODUCTION OF GUESTS

The chair recognized Representative Capelo who introduced Dr. Rene M. Rodriguez and his family.

HR 262 - ADOPTED
(by Hunter and Hilderbran)

Representative Hunter moved to suspend all necessary rules to take up and consider at this time **HR 262**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 262, Recognizing March 25, 2003, as Texas Medal of Arts Awards Day at the Capitol.

(Speaker in the chair)

HR 262 was adopted without objection.

INTRODUCTION OF GUESTS

The speaker recognized Representative Hunter who introduced winners of the Texas Medal of Arts Awards.

(Goolsby in the chair)

HR 561 - ADOPTED
(by Dutton)

Representative Dutton moved to suspend all necessary rules to take up and consider at this time **HR 561**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 561, Commemorating the 11th Annual Scholarship Recognition Luncheon and Fashion Gala hosted by the Knights of Peter Claver and the Knights of Peter Claver Ladies Auxiliary, Council and Court 72 and Our Mother of Mercy Church in Houston.

HR 561 was adopted without objection.

HR 582 - ADOPTED
(by Capelo)

Representative Capelo moved to suspend all necessary rules to take up and consider at this time **HR 582**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 582, Recognizing March 25, 2003, as Diabetes Day at the State Capitol.

HR 582 was adopted without objection.

HR 560 - ADOPTED
(by Dutton)

Representative Dutton moved to suspend all necessary rules to take up and consider at this time **HR 560**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 560, In memory of Dr. Gideon Lamar Sanders, Sr., of Houston.

HR 560 was unanimously adopted by a rising vote.

On motion of Representative Edwards, the names of all the members of the house were added to **HR 560** as signers thereof.

HR 520 - ADOPTED
(by Rodriguez)

Representative Rodriguez moved to suspend all necessary rules to take up and consider at this time **HR 520**.

The motion prevailed without objection.

The following resolution was laid before the house:

HR 520, Congratulating the Honorable Joaquin Castro on his selection as one of the most eligible bachelors highlighted in the February 2003 edition of Latina magazine.

HR 520 was read and was adopted without objection.

On motion of Representative Dukes, the names of all the members of the house were added to **HR 520** as signers thereof.

FIVE DAY POSTING RULE SUSPENDED

Representative Bonnen moved to suspend the five day posting rule to allow the Committee on Environmental Regulation to consider **HB 2589**.

The motion prevailed without objection.

BILLS AND JOINT RESOLUTIONS ON FIRST READING
AND REFERRAL TO COMMITTEES

Bills and joint resolutions were at this time laid before the house, read first time, and referred to committees. (See the addendum to the daily journal, Referred to Committees, List No. 1.)

(Speaker in the chair)

MAJOR STATE CALENDAR
HOUSE BILLS
SECOND READING

The following bills were laid before the house and read second time:

CSHB 4 ON SECOND READING
(by Nixon, Allen, Capelo, Woolley, R. Cook, et al.)

CSHB 4, A bill to be entitled An Act relating to reform of certain procedures and remedies in civil actions.

ESTABLISHMENT OF LEGISLATIVE INTENT AND HISTORY

Representative Wolens moved that for the purposes of legislative intent and history on **CSHB 4** that the debate last week be considered part of the debate on **CSHB 4** today.

The motion prevailed without objection.

Amendment No. 1

Representative Coleman offered the following amendment to **CSHB 4**:
Floor Packet Page No. 513

Amend **CSHB 4** by striking out the enacting clause.

CSHB 4 - POINT OF ORDER

Representative Gallego raised a point of order against further consideration of **CSHB 4** under Article III, Section 16 of the Texas Constitution on the grounds that each committee meeting must be open to the public.

The speaker deferred the disposition of the point of order.

MESSAGE FROM THE SENATE

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 2).

CSHB 4 - (consideration continued)

(Bailey now present)

Amendment No. 1 was withdrawn.

The speaker overruled the point of order, speaking as follows:

Mr. Gallego raises a point of order against further consideration of **HB 4**. The substance of this point of order is that because **HB 4** was derived from a meeting that violated Article III, Sec. 16, Texas Constitution (the open sessions provision of the Texas Constitution), **HB 4** is incurably tainted and is therefore permanently ineligible for consideration by the house.

The house has routinely held that returning a bill to committee cures any procedural flaws or infractions if the bill is eventually voted out of committee in conformity with the rules. By way of precedent, the chair notes that during the 74th Legislature (1995), three bills were returned to committee after a point of order was sustained and during the 76th Legislature (1999), two bills were returned to committee after a point of order was sustained. In three of these instances, these bills were subsequently considered in a formal meeting and reported favorably from committee. Since the 75th Legislative Session, nine bills have been recommitted to committees and subsequently reported favorably from those committees. Like these examples, **CSHB 4** was considered in a formal meeting and was reported favorably from the committee to which it was returned after the point of order was sustained.

The chair is not in a position to decide a point of order based on testimony. Rather, the chair must look to the records of the house. Based on the record, the chair cannot hold that the constitution was violated. Although the chair makes no findings of fact as to whether the constitutional requirements for open sessions were violated with respect to **CSHB 4**, any actions that were potentially invalidated under these provisions were subsequently cured by the Committee on Civil Practices at its formal meeting on March 20, 2003. As an analogy, the Texas Attorney General has noted that under the Open Meetings Law, "a governmental body that has taken action on a matter at a meeting that violates the act may meet again and validly authorize the action at a properly convened meeting of which the public has received adequate notice." (Open Meetings Handbook, OAG, p. 51).

Futhermore, the chair notes that although **HB 4** was returned to committee to remove the procedural taint (and thereby preserve the clear and open process of the house), the chair adopts the generally held proposition that a defect in committee procedures does not survive to the floor if the records of the house reflect that things are in order. (See House Precedents following Rule 4, Section 14).

Accordingly, the point of order is respectfully overruled.

ADDENDUM: During the 76th Legislative Session, 14 bills were returned to committee after a point of order was sustained and 13 of those bills were subsequently reported favorably from committee.

APPEAL OF POINT OF ORDER

Pursuant to Rule 1, Section 9 of the House Rules, an appeal was made to the speaker's ruling in the above point of order. Accordingly, the speaker pro tempore took the chair.

The chair laid before the house and had read the names of the members who appealed the ruling as follows: Castro, Coleman, Y. Davis, Dutton, Farrar, Martinez Fischer, J. Moreno, P. Moreno, Noriega, and Rodriguez.

MOTION TO PRINT REMARKS

Representative Thompson moved to print remarks by Speaker Pro Tempore Turner.

Representative Keel raised a point of order against further consideration of the motion to print remarks under Rule 1, Section 9(b) of the House Rules on the grounds that the motion is not timely.

The chair sustained the point of order.

Representative J. Moreno withdrew his name from the appeal of the point of order.

Representative Burnam added his name to the appeal of the point of order.

Representatives Burnam and Castro withdrew their names from the appeal of the point of order.

Representatives Alonzo and Telford added their names to the appeal of the point of order.

Representative Alonzo withdrew his name from the appeal of the point of order.

Representative Wilson moved to dismiss the appeal of the point of order on the basis that only nine members were requesting an appeal.

The appeal of the point of order was dismissed.

**ADDRESS BY REPRESENTATIVE KEEL
ON A MATTER OF PERSONAL PRIVILEGE**

The chair recognized Representative Keel who addressed the house on a matter of personal privilege, speaking as follows:

Members, I would recommend for your reading Section 11, Article III of the Texas Constitution which I would like to read to you which says, "notwithstanding any provision of statute, the house of representatives adopts the following rules to govern its operations and procedures." Excuse me. That is the statement of authorization of precedence invoking Section 11, Article III. Our statement of authorization of precedence, which is allowed by the Texas Constitution, provides that the provisions of our rules in the house shall be deemed the only requirements binding on the house of representatives under Section 11, Article III of the Texas Constitution.

Now, I've heard, in the zeal of the political moment, some people suggest that a statute of criminal violations applies, and I just want to take personal privilege to say that where a member unjustifiably suggests criminal liability on another member, where there is none, that is a dishonor, and I'd be very careful. Because you see, whenever you go back there in a caucus meeting, you've violated the Open Meetings Act. Whenever there is a majority of a committee present with you, you've violated the Open Meetings Act, and yes, under the literal reading of the Open Meetings Act, when each of us engages in what has been traditional legislative practice of every legislative body in the United States, that is to go to other members once you have constituted a quorum or a majority of the committee you're soliciting, you have committed a violation of the Open Meetings Act. By the way, it's punishable by up to six months in jail. My point here in the personal privilege speech is to point out to you that people who suggest that any committee members of the Civil Practices Committee committed an offense are wrong and that they should look at themselves and their conduct before they devolve to that type of name-calling.

**ADDRESS BY REPRESENTATIVE THOMPSON
ON A MATTER OF PERSONAL PRIVILEGE**

The chair recognized Representative Thompson who addressed the house on a matter of personal privilege, speaking as follows:

Mr. Speaker, members, I've had the distinct privilege of sitting next to the chairman of this committee where this bill is under discussion. And I feel very honored that he has chosen each session that he has been here to sit with me and

dialogue with me on a lot of issues, on many of which we both differ. I know no other person in this body who I can consider more honorable than I do Joe Nixon; and he knows that I speak from the heart. The deliberation that we have been doing here today, it is not to box anybody into any criminal act. That is not my intent, and I certainly hope that is not the intent of any other member in this body to try to get anyone in a criminal entanglement because of the actions that they are trying to do to prosecute a bill that they believe in that would do something good for the State of Texas. But there is something that is called the integrity of this house, and there is something that are called rules that we voted on the first day of January 14, 2003, and those are the rules that we agreed, as members of this august body, to be governed by.

When each of you took your oath of office, you agreed to uphold the constitution of the State of Texas. Each of you agreed to that. The arguments that have been propounded today were merely to determine whether or not an alleged meeting that was held to discuss the intent of the chair to fold bills together and to make it a common bill so that there would not be, I'm assuming, a necessity of debating two separate pieces of legislation that the chair may have assumed could have easily been done in a single piece of legislation. That is my assumption. I don't think that there was any criminal intent, nor do I believe that there was any intent on the part of this chair to violate any House Rules that we voted on. But I do believe that we ought to know what rules we are going to follow, and I do believe that we should be governed by the rules that we agreed to follow. All of us can read in this body, and I'm not going to ask that you read the constitution, and I'm not going to demean you to ask you to read anything about the government code. But I'm going to ask you to continue to remember your commitment that you took. I would hate to say that any member has criminal intent because they raise issues; and persons who feel offended by the fact of questions being asked on issues that they are trying to get resolved, I'm just sorry that you're in the wrong body if you're that thin-skinned. This is a body that seeks answers. All of us have to be accountable for the votes that we're going to be casting here, and surely you want to be able to discuss those votes and to defend those votes. I know I do. And while I admire my colleague, while I don't believe that he has done anything wrong, criminally, if what happened happened, it was a closed meeting according to the rule of the chair when he ruled that it was a violation of Rule 4, Section 12. I'm not challenging the chair, I'm just merely interpreting what I think the chair said. We all have to get along in this body. I don't care whether you're Republican or Democrat. I don't care if you like me or dislike me. But I can guarantee one thing, I'm going to respect each one of you while you're here, and I'm going to do my level best to work with you while I can. I'm not going to step on your toes and I'm going to make certain that you don't step on mine. But I'm going to do all I can do to see that we do the best for this state that we can, that we get along. But I'm going to say this, we ought to know the rules that we are following in this house, and you should remember that you took an oath of office to uphold the constitution of this state.

**ADDRESS BY REPRESENTATIVE WILSON
ON A MATTER OF PERSONAL PRIVILEGE**

The chair recognized Representative Wilson who addressed the house on a matter of personal privilege, speaking as follows:

Thank you Mr. Speaker, members. This is only the second time in my 26 years and 14 elections that I have requested the opportunity to visit you for a few minutes in the form of a personal privilege speech. I think it's a highly unusual request, one that this body has always been kind enough to recognize in the time that I have served and the time that I used to sit in the gallery as a staff member. I don't take it lightly, I appreciate your respect, and I appreciate you allowing me the opportunity to visit with you for just a few seconds.

I want to clarify a few things that were said throughout the debate today. First of all, the speaker did not rule that the meeting in dispute was in fact an illegal meeting. He did not. If you read the ruling, you'll see that he didn't. This issue today, on the point of order that was raised, was raised under the question of whether or not recommitting a bill to committee resolves certain problems evident in the bill as it was on the floor before it went back. We have always known, respected, upheld the process by which we recommit a bill. First of all, it is normally the author's prerogative, and the author is usually given the respect of this body, if they request a bill to be recommitted. I guess we've forgotten that. But when the bill does go back to committee, in every instance hundreds, literally thousands of times those problems evident in the bill have been cleansed by that process. You've started over.

I submit to you, this disagreement is not over open meetings. This controversy is not about the rules violation. What you have, in this particular fight, are the haves versus the haves. We're in the middle. There's a lot at stake—billions of dollars at stake. If we are not careful as members, we can be used and abused to the economic benefit of those who would play us against each other. And let me tell you something—when they finish, they're going home. When they cut a swath through this body and get what they want, no matter who it is they go home. And you and I are still here. And Representative Thompson and Representative Nixon are still sitting next to each other. The question for us is, are we going to allow ourselves to be pitted against each other for the benefit of somebody else? The other day, when the speaker did rule, he offered those who brought the point of order the opportunity to withdraw it. He said, "If you withdraw it, we'll recommit this bill. If it's really a question about the process being adhered to, and open meetings, and non-secret meetings, we will recommit this bill if you'll just withdraw the point of order." You know what the answer was? "No, I can't do that."

That, to me, was a turning point. They weren't concerned about an open process, they're concerned about something else. None of us are stupid. You don't get here by being a dummy. I know there are those who would argue about me sometimes, and I understand that. But, most of us have to have gone through the gauntlet to get here. This debate, my friends, I'm telling you, is not what it appears. I suggest to you, this is not the first time we're going to visit this issue as we move along. If it is the intent of those who don't want to see this process

work, to disrupt, disrespect, destroy, then that's fine. Let's strap it on, and let's get after it. But don't try to hide behind some of rules of "Oh, you know, we're adhering to the rules." The constitution gives us the authority to set our own rules of operation, that's where we derive our authority to meet. We are not covered, I know a lot of folks don't understand this, we are not covered by the Open Meetings Act, folks. Doesn't touch us top, side, or bottom. We couldn't go to the bathroom together if we did, we couldn't meet in the hallway, we couldn't have committee dinners, we could barely greet each other on the floor. We are not covered by the Open Meetings Act. The folks who fought us on this issue know that. They know that.

But I'm telling you, for the sake of this body, for the sake of this house, we have got to focus on what we've got to do. We are halfway through the session, folks. Halfway through, and we gotta go home. And the people out there are going to say, "What'd they do?" They don't care about us not liking each other, and not liking what somebody wears, or...all they want us to do is take care of the business of the people. If we leave here and we don't take care of the people's business, it's going to be on all of us in this institution. Not just one side or the other, not just Democrat or Republican, or African-American or Anglo or Hispanic. This impasse affects all of us. Man, I explained to my 13-year old son, he said, "Dad, what are y'all doing?" I suggest we get about the business of taking care of the people's business, my friends.

ADDRESS BY REPRESENTATIVE WOLENS ON A MATTER OF PERSONAL PRIVILEGE

The chair recognized Representative Wolens who addressed the house on a matter of personal privilege, speaking as follows:

Members, I'm only going to be here for two minutes. In my 23 years here, I have never done this, and I'm not going to be here for very long, but I just wanted to respond to one thing that Ron Wilson had to say. There is a reason for the impasse, there is a reason for it, and I don't speak to anybody's motivations here. I want to tell you this: I've never seen a bill with 300 amendments on it. But there's a reason because we married two bills that had no business getting married with each other. This was a shotgun wedding between **HB 3** and **HB 4**. We could pass **HB 3** in three hours or four hours of debate, that's all. Everybody got committed to doing **HB 3**. The doctors did a wonderful job, those are good folks. They have a serious problem facing them. They have an enormous amount of goodwill, they have an enormous amount of goodwill in the State of Texas, they have an enormous amount of goodwill here in the Texas Legislature, they have a lot of goodwill with each of us. And there are a lot of problems facing the doctors, and we need to figure out a way to craft legislation so that we can get their premiums down so they can all get insured. And I'm sure that if we had that bill by itself in front of us, Phil King, that we would debate the \$250,000 cap and we would get to some answer, we would define standards and we would get to an answer, and we would debate 20 or 30 or 40 amendments or so, and we would get to an answer, and that'd be gone. We'd be gone. And then if you wanted to bring the tort bill, and go through 15 or 20 different major areas of the law, from

venue, to forum nonconvenes, to subsequent measures, to remedial measures, to conflicts of law, to class action, I mean, each section of this would take up three hours of debate. When we did a law on venue on forum nonconvenes back in '95 or '97 or '99, whenever it was, Rob Junell had the bill, we debated it for two or three hours. We did 20 or 30 amendments, it was a huge issue. It was a huge issue on the out-of-state lawsuits. We took three hours to do that. And here we've taken 15 major issues and put them into **HB 4**. And then all of a sudden, we're dealing with **HB 3** and **HB 4**.

So I suggest to you, that any of you that read bad motives into any of the amendments, I would just invite you to reconsider your thoughts. Chair Nixon, I have no thought about your doing anything intentionally, it's absurd, it's just absurd, of course you didn't. Of course you didn't. And I told you when I was arguing up here at the front mic, I've done this before too accidentally. I mean, accidentally we've been in a hearing and we all get together and someone will say, "You've got a majority of you there, you're having a closed meeting." And my thought, when this was brought to my attention in a very aggressive way by a reporter, my thought was to say, "You're right, I apologize, I didn't mean anything by it," and then to discuss openly what we did. So sometimes we do this stuff. We don't mean to do anything bad, there's no bad intent by any of us, we just do it and then we get it called to our attention so we fix it. And my hunch is after this five hour debate on open and closed meetings, we'll probably never do this again. We'll be overly protective. Like Steve Collins said, in the chairman of the committee's letters last week or two weeks ago, suggesting that we not have chairman or committee dinners for fear that something might be discussed that would abrogate the Open Records.

So we're doing something good, out of everything like this something good's going to happen. But please Ron, Ron Wilson, and I want to tell you, I have been at the other end of Ron Wilson's peccadillos, his stabbing me, Ron Wilson has stabbed me many a time. He has stabbed me on my bills for twenty years. And I just take it here, and he kills me, and he just kills me fair and square with the rules. And I'm a big boy, and I just...he stabs me in the back, and I just feel it, and it's over. And I know it's just business. And I don't take anything personally, and I'm sure Ron Wilson is going to do it to me again. And anybody who has a point of order is welcome to raise it on the house floor, and no one has to pull it back. No one has to pull it back, and everybody has got the right, everybody has got the right to have a decision made on a point of order, for two reasons. Number one, because that's what it's in the rules for. And secondly, is it sets a precedent. We have to know now, how a ruling is going to be in the future, because we want consistency, and we want precedent, and we want to have things that we can foresee. So this is a wonderful body, we are a deliberate body, we are here to question, and no matter how long the debate goes on, we are here to look for truths. There are many different truths. And thank you for your patience.

**ADDRESS BY REPRESENTATIVE GALLEGO
ON A MATTER OF PERSONAL PRIVILEGE**

The chair recognized Representative Gallego who addressed the house on a matter of personal privilege, speaking as follows:

Mr. Speaker, like several of the other members here, I have never done this in my seven elections to this chamber. I want to incorporate Mr. Wolens' position, because I think it's very important that we follow the rules. The rules serve a twofold purpose. First, the rules serve the purpose of ensuring the will of the majority. The other purpose of the rules is to protect the rights of the minority. It is absolutely imperative that we learn to live by the rules that we pass. It is also important that we recognize consistency. Yesterday, with respect to the motion to recommit, we had a discussion at the podium. And one of the things that was discussed, was Mr. Wilson's position that on motions to recommit, it's courtesy to let the author recommit his own bill. I took it...I agreed with that discussion, and I thought, "Well, it's professional courtesy." And then a member of the press handed me a House Journal from Thursday, May 6, 1999, where Representative Dutton was carrying **HB 2280**, a bill to be entitled An Act relating to a sales tax exemption for clothing and footwear. Apparently, there was a problem with **HB 2280** and Representative Dutton moved to recommit. A record vote was requested, and after that, a verification was requested and granted. And the journal contains the names of those people who, on a motion that was allegedly courtesy, voted yes and voted no. There's something to be said for consistency. There's something to be said for acknowledging that rules are OK when everyone follows them. Rules are OK when everybody plays by the same rules. When I raised the issue today with respect to the constitution, I raised it because I'm a big believer in open government, and because to my knowledge there was no precedent. That issue, as a lawyer, is what is called a case of first impression. There was no allegation of criminal wrongdoing, there was no allegation that would have any way on my part, or I believe any other member's part, impugned the integrity of the author of this bill. Those of you who are more recent arrivals in the House of Representatives, I told you the other day that you missed something in not being around Irma Rangel. You also missed something in not being around someone else. There was a guy named Bob Johnson. Bob Johnson, who the legislative services building is named for, was the parliamentarian in the house for years. And then, when Governor Bullock became Lieutenant Governor, he became the parliamentarian of the senate. Let me, ah...he was really one of the pioneers in the rules business. And let me read you a little bit of some, of a compilation I guess, of what he said years ago on this issue:

"Long ago, I concluded the Open Meetings Act does not apply to the Texas House of Representatives. The rulemaking function of the house belongs to the house itself. Not the senate, not the governor, and not the courts. No court and no member of the executive branch may enforce the statute upon the House Rules. That is why the House Rules have long stated, even before Rule 1, pursuant to and under the authority of Section 11, Article III, Texas Constitution, and notwithstanding any provision of statute, the House of Representatives

adopts the following rules to govern its operations and procedures. The provisions of these rules shall be deemed the only requirements binding on the House of Representatives under Section 11, Article III, Texas Constitution, notwithstanding any other requirements expressed in statute." That's the provision, I believe, that Representative Keel raised. But Mr. Johnson goes on, "But beware: the settled rule of law among our United States is that each house of the legislature is generally empowered to determine its own rules of procedure. But no rule, no rule of either house can evade or avoid the effects of rules prescribed by the constitution. Our Texas Constitution directs the business of the people's house to be conducted in open meetings under Section 16, Article III. It cannot be evaded or avoided, it is fundamental. It cannot be set aside by a vote, nor any procedure of the house. It is absolute, or it is nothing."

As Ms. Thompson noted, our oath is to protect and preserve and defend the Constitution of Texas. Let me go back to Mr. Johnson's words. "Those of you who wear the banner of conservatism, owe no greater allegiance than to conserve the institutions of our constitution, which are based on our core values. Those of you who proclaim liberalism, must know that individual rights, and those of the minority, depend upon strict adherence to that same constitution. Special interest groups come and go. Today one side prevails, tomorrow another, each forever fearing the damage a decision contrary to their view will inflict on some deserving soul. But the House of Representatives is forever. If you preserve it from attack by the courts and the executive branch, the house is forever. Not to strictly conform the conduct of the house to the constitution is to sacrifice your sacred office to the ambitions of other branches of government. Honorable they may be, but ambitious nonetheless. No bill compares one iota to the value of the house, to a free and progressive Texas. Any bill may die, so that the house may live, and its integrity be affirmed to the public and declared in fact for all time."

That was Bob Johnson, who died in 1995, after a career of service to both the house and the senate. It's important to understand that all of this is substantive, whether we argue about the procedure of the rules, whether we argue about the merits of the bill. And none of this, none of this, should be personal. Each of us has to go home to the constituency that we represent, each of us represents a very different constituency. I can tell you that in Alpine, and Fort Davis, and Marfa, and Del Rio, and Uvalde, there's not a lot in common with a lot of parts of Houston or Dallas or Fort Worth. But each of us comes to represent a certain part of our state, and each of us remembers that not only do we hail from a different district, above and beyond that, we're all Texans. Governor Bullock had a saying that turned into lapel pin that I will always, always treasure. And that is, "God Bless Texas." Thank you.

ADDRESS BY REPRESENTATIVE WOHLGEMUTH ON A MATTER OF PERSONAL PRIVILEGE

The chair recognized Representative Wohlgemuth who addressed the house on a matter of personal privilege, speaking as follows:

Thank you, Mr. Speaker. In 1997, after I had raised a point of order, the next morning a personal privilege speech was taken by the late Representative Dan Kubiak. I feel uniquely qualified to read an excerpt from his speech:

"With ever-increasing frequency, we have seen the technical become the focus of our attention while the real issues are lost in the fray. The issues we were sent here to resolve go untended because a mistake made by staff, or even members themselves, consume our time. I do not hold myself out as a saint or a savior. I too have used the system to achieve my goals, but we have come too far. We have abdicated our responsibilities to face the tough issues head on, to resolve our differences as legislators, as policymakers, as adults. We have ceased to become lawmakers and instead have become players in a parliamentary party game, each of us scrambling to find a seat before the music stops. Well, that is not good enough. This is not Washington, D.C. where partisan politics and pettiness is commonplace. This is Texas, and your colleagues deserve better than that, your constituents deserve better than that, and the citizens of Texas deserve better than that."

Thank you, Representative Kubiak.

REMARKS ORDERED PRINTED

Representative Thompson moved to print the previous personal privilege addresses.

The motion prevailed without objection.

(Speaker in the chair)

CSHB 4 - STATEMENT BY REPRESENTATIVE KEEL

Spirited debate is not a license to disparage other members of the house by suggesting that they acted dishonorably, when they in fact did not. Yet some house members have charged in the debates related to **HB 4** that the Civil Practices Committee acted dishonorably. Regrettably, some members even went so far as to allege that the committee may have violated the Texas Open Meetings Act. This allegation is false, and enthusiasm to kill a bill does not excuse spurious accusations against other members.

It should be noted that in making these charges, the accusers have difficulty hiding behind their alleged motivations of ensuring "open government." When the speaker proposed to re-commit the bill back to the committee process if the point of order was withdrawn, the proponents of the point of order refused to withdraw it. In order to preserve the integrity of the house, and although there was no finding that the committee had violated any house rule, the speaker sustained the point of order, sending the bill back to committee. The speaker said, "The chair truly believes that both sides of this issue have merit. But the chair concludes that the better option is to preserve the clear and open process of the house, without determining facts. Accordingly, the point of order is sustained under Rule 4, Section 12."

During today's floor debate, again the false charge was leveled. The hypocrisy in arguing that the Open Records Act, including its criminal provisions, applies to the legislature is apparent in many regards. If the act

applies, then the members so charging have themselves violated the act every time they have met in caucus, or every time they have met with other legislators individually to secure a majority of votes on a committee (see Tex. Govt. Code Sec. 551.143), and clearly the House General Investigating Committee is in violation of the law whenever it meets in secret pursuant to House Rules. This, of course, cannot be so. And it is not so because the house proceedings are governed exclusively by our own rules, and the Texas Open Meetings Act does not apply.

The open meetings law was originally enacted in 1967 by the 60th Legislature. It has been amended many times by subsequent legislatures. In 1969 the legislature amended the act to recognize that the legislature has the authority to set the rules for the notice of legislative committee meetings (Sec. 551.046). In 1993 the law was codified by the legislature as Chapter 551, Government Code. Section 551.003 reads as follows: "In this chapter, the legislature is exercising its powers to adopt rules to prohibit secret meetings of the legislature, committees of the legislature, and other bodies associated with the legislature, except as specifically permitted in the constitution."

Section 11, Article III, Texas Constitution, provides a grant of independent authority to each house for each session of the legislature "to determine the rules of its own proceedings." It is the generally accepted rule of law that one legislature may not bind a subsequent legislature by enactment of laws, whether a substantive law or a procedural limitation. While the 60th Legislature chose to prescribe rules relating to legislative meetings in the adoption of the Open Records Act and other legislatures followed suit and refined those rules, more recent legislatures have chosen to use the power granted by Section 11, Article III, Texas Constitution, to enact a body of rules that govern legislative operations and proceedings.

The rules that govern each house of the 78th Legislature include a statement of authorization and precedence, referencing Section 11, Article III, Texas Constitution. The House Rules state as follows: "Pursuant to and under the authority of Section 11, Article III, Texas Constitution, and notwithstanding any provision of statute, the House of Representatives adopts the following rules to govern its operations and procedures. The provisions of these rules shall be deemed the only requirements binding on the House of Representatives under Section 11, Article III, Texas Constitution."

While on its face, Chapter 551, Government Code could be argued to apply to the legislature, by using the power granted by Section 11, Article III, Texas Constitution, each house of the legislature instead adopted a body of rules to govern its operations and place procedural limitations on its meetings, whether meeting as bodies of the whole or in committees. Those rules provide the exclusive requirements and remedies that bind that house.

Included in the rules therein adopted is Rule 4, Sec. 12, which states: "All meetings of a committee or subcommittee, including a calendars committee, shall be open to other members, the press, and the public unless specifically provided otherwise by resolution adopted by the House." It should be noted that implicit in this rule is the fact that the house, if it were to choose to do so, could anytime by resolution close its meetings. The House Rules also provide for certain

committees, such as the General Investigating Committee, to indeed meet in secret. This is plainly corroborative of the fact that Tex. Govt. Code Sec. 551.003 is limitative of the statute's applicability to the legislature. See also the Senate Rules. (See also Section 16, Article III, Texas Constitution, which provides that "[t]he sessions of each House shall be open, except the Senate when in Executive session.")

An attempt to apply the literal provisions of the Open Meetings Act to the house and senate would conflict with the competing provisions of the Texas Constitution. It would also mean that rule-making authority given to the legislature by the constitution has no meaning, and non-public meetings—such as those authorized by rules adopted by the house for the General Investigating Committee, or for the impeachment or punishment of a member of the house, "or any other matter of a quasi-judicial nature..." (which also authorizes closed meetings to examine witnesses, deliberate, or consider or debate a decision), (Rule 4, Sec. 12)—are all illegal.

Furthermore, Rule 4, Sec. 13 of the House Rules states, "The Rules of Procedure of the House of Representatives, and to the extent applicable, the rules of evidence and procedure in civil courts of Texas, shall govern the hearings and operations of each committee...." Because the legislature did not adopt the Texas Open Meetings Act or any other statute as applicable to its committee operations, the exclusive remedy for a violation of the House Rules is contained within the rules. Where a point of order is sustained for a violation of Rule 4, Sec. 12, the exclusive remedy is to knock the bill off the floor and send it back to committee. The House Speaker did this in regard to **HB 4**.

I am aware of only two rulings that could be attempted to be used to try and justify an application of the Open Meetings Act to the legislature. One is *In Re Texas Senate*, 36 S.W.3d 119 (Tex. 2000) in which the Texas Supreme Court considered the application of the open meetings law to the election of the lieutenant governor. Preliminary to that holding the court stated that the open meetings law "clearly covers the Committee of the Whole Senate." But in saying this, the court did not consider and did not address arguments that the statute was inapplicable. The court ruled that a provision of the Texas Constitution expressly authorized the secret ballot. The court's statement in regard to the Texas Open Meetings Act is therefore dicta. It is important to note, however, that the competing constitutional provision prevailed regarding the procedural issue, and the senate was held to be within its rights to hold a secret vote, notwithstanding the provisions of the Texas Open Meetings Act.

An attorney general opinion, No. JM-122 (1983) found that the open records statute expressly applied to the legislature and prevailed over conflicting legislative rules adopted by the house that purported to make certain committee records confidential. But it should be recognized that the confidentiality of legislative records is hardly a procedural issue; it presents clearly substantive, as opposed to procedural, matters. The opinion did not address meetings, which is equally clearly a procedural issue.

Some of the comments made in debate, falsely suggesting less than honorable conduct by members of the Civil Practices Committee, unjustifiably cast a cloud over the house, suggesting some sort of criminal liability issue where there is none. I make this entry in the House Journal to condemn such tactics in the strongest of terms.

SCR 17 - ADOPTED
(Hunter - House Sponsor)

Representative Hunter moved to suspend all necessary rules to take up and consider at this time **SCR 17**.

The motion prevailed without objection.

The following resolution was laid before the house:

SCR 17, Recognizing the artists and arts patrons who are being honored at the Texas Medal of Arts Awards on March 25, 2003.

SCR 17 was adopted without objection.

CSHB 4 - (consideration continued)

Amendment No. 2

Representative Nixon offered the following amendment to **CSHB 4**:
Floor Packet Page No. 471

Amend **CSHB 4** as follows:

(1) On page 2, line 3, strike "and".

(2) On page 2, line 4, between "jurisdiction" and the period, insert:
"; and

(D) has rulemaking authority involving the subject matter of the disputed claim".

(3) On page 8, strike lines 19 and 20 and substitute:

SECTION 1.03. Section 22.225, Government Code, is amended by amending Subsections (b) and (d) and adding Subsection (e) to read as follows:

(4) On page 9, between lines 18 and 19, insert:

(e) For purposes of Subsection (c), one court holds differently from another when there is inconsistency in their respective decisions that should be clarified to remove unnecessary uncertainty in the law and unfairness to litigants.

(5) On page 9, line 19, strike "Sections 51.014(a) and (b)" and substitute "Sections 51.014(a), (b), and (c)".

(6) On page 11, line 3, strike "Subsection (a)(3)" and substitute "Subsection (a)(3), (5), or (8)".

(7) On page 11, between lines 4 and 5, insert:

(c) A denial of a motion for summary judgment, special appearance, or plea to the jurisdiction described by Subsection (a)(5), (7), or (8) is not subject to the automatic stay [~~of the commencement of trial~~] under Subsection (b) unless the motion, special appearance, or plea to the jurisdiction is filed and requested for submission or hearing before the trial court not later than the later of:

(1) a date set by the trial court in a scheduling order entered under the Texas Rules of Civil Procedure; or

(2) the 180th day after the date the defendant files:

(A) the original answer;

(B) the first other responsive pleading to the plaintiff's petition; or

(C) if the plaintiff files an amended pleading that alleges a new cause of action against the defendant and the defendant is able to raise a defense to the new cause of action under Subsection (a)(5), (7), or (8), the responsive pleading that raises that defense.

(8) On page 11, strike lines 5 and 6 and substitute:

SECTION 1.05. Section 22.001, Government Code, is amended by adding Subsection (e) to read as follows:

(e) For purposes of Subsection (a)(2), one court holds differently from another when there is inconsistency in their respective decisions that should be clarified to remove unnecessary uncertainty in the law and unfairness to litigants.

SECTION 1.06. This article applies only to a suit commenced on or after the effective date of this article.

(9) On page 18, strike lines 25 and 26 and substitute:

SUBCHAPTER F. CONSOLIDATION OF MULTIDISTRICT LITIGATION
FOR PRETRIAL PROCEEDINGS

(10) Beginning on page 32, strike from line 22 through page 33, line 13, and renumber the subsequent SECTIONS of ARTICLE 4 appropriately.

(11) On page 46, strike line 13 and substitute:

ARTICLE 9. BENEVOLENT GESTURES

SECTION 9.01. Section 18.061(c), Civil Practice and Remedies Code, is repealed.

SECTION 9.02. This article applies only to the admissibility of a communication in a proceeding that begins on or after the effective date of this article. The admissibility of a communication in a proceeding that began before the effective date of the article is governed by the law applicable to the admissibility of the communication immediately before the effective date of this article, and that law is continued in effect for that purpose.

(12) On page 46, line 25, strike "nonprofit".

(13) On page 47, strike lines 12 and 13 and substitute: Section 1396n(c), as amended; [~~or~~]

(xii) a nursing home; or

(xiii) a chiropractor.

(14) On page 47, lines 26 to 27, strike "practice or procedure".

(15) On page 50, strike lines 15 through 20 and substitute:

(22) "Hospital system" means a system of hospitals located in this state that are under the common governance or control of a corporate parent.

(16) On page 50, line 23, strike "Section 1.04" and substitute "Sections 1.04 and 1.05".

(17) On page 51, strike lines 2 through 6 and substitute:

(b) Notwithstanding Subsection (a) of this section, in the event of a conflict between this Act and Section 101.023, 102.003, or 108.002, Civil Practice and Remedies Code, those sections of the Civil Practice and Remedies Code control to the extent of the conflict.

(c) Notwithstanding Section 22.004, Government Code, and except as otherwise provided by this Act, the supreme court may not amend or adopt rules in conflict with this Act.

(d) The district courts and statutory county courts in a county may not adopt local rules in conflict with this Act.

Sec. 1.05. SOVEREIGN IMMUNITY NOT WAIVED. This Act does not waive sovereign immunity from suit or from liability.

(18) On page 55, line 7, strike "based" and substitute: based. This section does not apply to a health care liability claim based solely on intentional denial of medical treatment that a patient is otherwise qualified to receive, against the wishes of a patient, or, if the patient is incompetent, against the wishes of the patient's guardian, on the basis of the patient's present or predicted age, disability, degree of medical dependency, or quality of life unless the medical treatment is denied under Chapter 166, Health and Safety Code

(19) On page 58, between lines 26 and 27, insert:

(f) This section does not apply to a health care liability claim based solely on intentional denial of medical treatment that a patient is otherwise qualified to receive, against the wishes of a patient, or, if the patient is incompetent, against the wishes of the patient's guardian, on the basis of the patient's present or predicted age, disability, degree of medical dependency, or quality of life unless the medical treatment is denied under Chapter 166, Health and Safety Code.

(20) On page 60, line 9, strike "(s) and (t)" and substitute "(s), (t), and (u)".

(21) On page 60, strike line 12 and substitute:

later than the 90th day after the date the claim was ~~is~~ filed.

(22) On page 63, between lines 5 and 6, insert:

(u) Notwithstanding any other provision of this section, after a claim is filed all claimants, collectively, may take not more than one deposition before the expert report is served as required by Subsection (a) of this section.

(23) On page 70, line 18, strike "Q,".

(24) Beginning on page 70, strike from line 20 through page 71, line 27.

(25) On page 78, between lines 25 and 26, insert a new SECTION 10.22 to read as follows and renumber subsequent sections appropriately:

SECTION 10.22. Section 84.003, Civil Practice and Remedies Code, is amended by adding Subdivision (6) to read as follows:

(6) "Hospital system" means a system of hospitals located in this state that are under the common governance or control of a corporate parent.

(26) On page 80, between lines 13 and 14, insert a new SECTION 10.24 to read as follows and renumber subsequent SECTIONS appropriately:

SECTION 10.24. Section 84.004, Civil Practice and Remedies Code, is amended by adding Subsection (f) to read as follows:

(f) Subsection (c) applies even if:

(1) the patient is incapacitated due to illness or injury and cannot sign the acknowledgment statement required by that subsection; or

(2) the patient is a minor or is otherwise legally incompetent and the person responsible for the patient is not reasonably available to sign the acknowledgment statement required by that subsection.

(27) On page 80, line 16, between the period and "Except", insert "(a)".

(28) On page 81, between lines 3 and 4, insert:

(b) Subsection (a) applies even if:

(1) the patient is incapacitated due to illness or injury and cannot sign the acknowledgment statement required by that subsection; or

(2) the patient is a minor or is otherwise legally incompetent and the person responsible for the patient is not reasonably available to sign the acknowledgment statement required by that subsection.

(29) On page 88, strike lines 18 and 19 and substitute:

ARTICLE 11. CLAIMS AGAINST EMPLOYEES OR VOLUNTEERS OF A GOVERNMENTAL UNIT

(30) On page 92, strike lines 9 and 10 and substitute:

SECTION 13.02. Section 41.008(b), Civil Practice and Remedies Code, is amended to read as follows:

(31) Beginning on page 92, strike from lines 19 through page 93, line 17.

Amend item (10), page 2, of Floor Amendment No. 2, to insert between "appropriately" and the period as follows:

, and beginning on page 35, strike from line 12 through line 23 and renumber the subsequent SECTIONS of ARTICLE 4 appropriately.

Amendment No. 2 was withdrawn.

(King in the chair)

Amendment No. 3

Representative Nixon offered the following amendment to **CSHB 4**:

Floor Packet Page No. 471

Amend **CSHB 4** as follows:

(1) On page 2, line 3, strike "and".

(2) On page 2, line 4, between "jurisdiction" and the period, insert:
"; and

(D) has rulemaking authority involving the subject matter of the disputed claim".

(3) On page 8, strike lines 19 and 20 and substitute:

SECTION 1.03. Section 22.225, Government Code, is amended by amending Subsections (b) and (d) and adding Subsection (e) to read as follows:

(4) On page 9, between lines 18 and 19, insert:

(e) For purposes of Subsection (c), one court holds differently from another when there is inconsistency in their respective decisions that should be clarified to remove unnecessary uncertainty in the law and unfairness to litigants.

(5) On page 9, line 19, strike "Sections 51.014(a) and (b)" and substitute "Sections 51.014(a), (b), and (c)".

(6) On page 11, line 3, strike "Subsection (a)(3)" and substitute "Subsection (a)(3), (5), or (8)".

(7) On page 11, between lines 4 and 5, insert:

(c) A denial of a motion for summary judgment, special appearance, or plea to the jurisdiction described by Subsection (a)(5), (7), or (8) is not subject to the automatic stay ~~[of the commencement of trial]~~ under Subsection (b) unless the motion, special appearance, or plea to the jurisdiction is filed and requested for submission or hearing before the trial court not later than the later of:

(1) a date set by the trial court in a scheduling order entered under the Texas Rules of Civil Procedure; or

(2) the 180th day after the date the defendant files:

(A) the original answer;

(B) the first other responsive pleading to the plaintiff's petition; or

(C) if the plaintiff files an amended pleading that alleges a new cause of action against the defendant and the defendant is able to raise a defense to the new cause of action under Subsection (a)(5), (7), or (8), the responsive pleading that raises that defense.

(8) On page 11, strike lines 5 and 6 and substitute:

SECTION 1.05. Section 22.001, Government Code, is amended by adding Subsection (e) to read as follows:

(e) For purposes of Subsection (a)(2), one court holds differently from another when there is inconsistency in their respective decisions that should be clarified to remove unnecessary uncertainty in the law and unfairness to litigants.

SECTION 1.06. This article applies only to a suit commenced on or after the effective date of this article.

(9) On page 18, strike lines 25 and 26 and substitute:

SUBCHAPTER F. CONSOLIDATION OF MULTIDISTRICT LITIGATION
FOR PRETRIAL PROCEEDINGS

(10) Beginning on page 32, strike from line 22 through page 33, line 13, and renumber the subsequent SECTIONS of ARTICLE 4 appropriately.

(11) On page 46, strike line 13 and substitute:

ARTICLE 9. BENEVOLENT GESTURES

SECTION 9.01. Section 18.061(c), Civil Practice and Remedies Code, is repealed.

SECTION 9.02. This article applies only to the admissibility of a communication in a proceeding that begins on or after the effective date of this article. The admissibility of a communication in a proceeding that began before the effective date of the article is governed by the law applicable to the admissibility of the communication immediately before the effective date of this article, and that law is continued in effect for that purpose.

(12) On page 46, line 25, strike "nonprofit".

(13) On page 47, strike lines 12 and 13 and substitute: Section 1396n(c), as amended; ~~[or]~~

(xii) a nursing home; or

(xiii) a chiropractor.

(14) On page 47, lines 26 to 27, strike "practice or procedure".

(15) On page 50, strike lines 15 through 20 and substitute:

(22) "Hospital system" means a system of hospitals located in this state that are under the common governance or control of a corporate parent.

(16) On page 50, line 23, strike "Section 1.04" and substitute "Sections 1.04 and 1.05".

(17) On page 51, strike lines 2 through 6 and substitute:

(b) Notwithstanding Subsection (a) of this section, in the event of a conflict between this Act and Section 101.023, 102.003, or 108.002, Civil Practice and Remedies Code, those sections of the Civil Practice and Remedies Code control to the extent of the conflict.

(c) Notwithstanding Section 22.004, Government Code, and except as otherwise provided by this Act, the supreme court may not amend or adopt rules in conflict with this Act.

(d) The district courts and statutory county courts in a county may not adopt local rules in conflict with this Act.

Sec. 1.05. SOVEREIGN IMMUNITY NOT WAIVED. This Act does not waive sovereign immunity from suit or from liability.

(18) On page 55, line 7, strike "based" and substitute: based. This section does not apply to a health care liability claim based solely on intentional denial of medical treatment that a patient is otherwise qualified to receive, against the wishes of a patient, or, if the patient is incompetent, against the wishes of the patient's guardian, on the basis of the patient's present or predicted age, disability, degree of medical dependency, or quality of life unless the medical treatment is denied under Chapter 166, Health and Safety Code

(19) On page 58, between lines 26 and 27, insert:

(f) This section does not apply to a health care liability claim based solely on intentional denial of medical treatment that a patient is otherwise qualified to receive, against the wishes of a patient, or, if the patient is incompetent, against the wishes of the patient's guardian, on the basis of the patient's present or predicted age, disability, degree of medical dependency, or quality of life unless the medical treatment is denied under Chapter 166, Health and Safety Code.

(20) On page 60, line 9, strike "(s) and (t)" and substitute "(s), (t), and (u)".

(21) On page 60, strike line 12 and substitute:
later than the 90th day after the date the claim was ~~is~~ filed.

(22) On page 63, between lines 5 and 6, insert:

(u) Notwithstanding any other provision of this section, after a claim is filed all claimants, collectively, may take not more than one deposition before the expert report is served as required by Subsection (a) of this section.

(23) On page 70, line 18, strike "Q,".

(24) Beginning on page 70, strike from line 20 through page 71, line 27.

(25) On page 78, between lines 25 and 26, insert a new SECTION 10.22 to read as follows and renumber subsequent sections appropriately:

SECTION 10.22. Section 84.003, Civil Practice and Remedies Code, is amended by adding Subdivision (6) to read as follows:

(6) "Hospital system" means a system of hospitals located in this state that are under the common governance or control of a corporate parent.

(26) On page 80, between lines 13 and 14, insert a new SECTION 10.24 to read as follows and renumber subsequent SECTIONS appropriately:

SECTION 10.24. Section 84.004, Civil Practice and Remedies Code, is amended by adding Subsection (f) to read as follows:

(f) Subsection (c) applies even if:

(1) the patient is incapacitated due to illness or injury and cannot sign the acknowledgment statement required by that subsection; or

(2) the patient is a minor or is otherwise legally incompetent and the person responsible for the patient is not reasonably available to sign the acknowledgment statement required by that subsection.

(27) On page 80, line 16, between the period and "Except", insert "(a)".

(28) On page 81, between lines 3 and 4, insert:

(b) Subsection (a) applies even if:

(1) the patient is incapacitated due to illness or injury and cannot sign the acknowledgment statement required by that subsection; or

(2) the patient is a minor or is otherwise legally incompetent and the person responsible for the patient is not reasonably available to sign the acknowledgment statement required by that subsection.

(29) On page 88, strike lines 18 and 19 and substitute:

ARTICLE 11. CLAIMS AGAINST EMPLOYEES OR VOLUNTEERS OF A
GOVERNMENTAL UNIT

(30) On page 92, strike lines 9 and 10 and substitute:

SECTION 13.02. Section 41.008(b), Civil Practice and Remedies Code, is amended to read as follows:

(31) Beginning on page 92, strike from lines 19 through page 93, line 17.

Amend item (10), page 2, of Floor Amendment 3, to insert between "appropriately" and the period as follows:

, and beginning on page 35, strike from line 12 through line 23 and renumber the subsequent SECTIONS of ARTICLE 4 appropriately.

Amendment No. 4

Representative Nixon offered the following amendment to Amendment No. 3:

Amend Amendment No. 3, **CSHB 4** as follows:

(1) Strike from page 2, line 5 through line 6.

(2) Insert new paragraph (39) on page 6, line 14, as follows:

"Strike from page 11, line 5 through line 6.

Strike from page 18, line 15 through line 21.

Strike from page 26, line 21 through page 27, line 12.

Strike from page 37, line 11 through 18.

Strike from page 42, line 20 through page 43, line 8.

Strike from page 46, line 7 through line 12.

Strike from page 86, line 7 through line 22.

Strike from page 87, line 10 through page 88, line 17.

Strike from page 90, line 19 through line 20.

Strike from page 91, line 17 through line 24.

Strike from page 93, line 18 through line 25.

Strike from page 95, line 5 through line 12.

Strike from page 96, line 21 through line 22 and substitute:

(c) Except as otherwise provided in Articles 6, 7, 10 and 15, this act applies only to a civil action commenced on or after the effective date of this act. An action commenced before the effective date of this act is governed by the law in effect immediately before the change in law made by this act, and that law is continued in effect for that purpose."

Amendment No. 4 was adopted without objection.

Amendment No. 5

Representative Hartnett offered the following amendment to Amendment No. 3:

Amend Amendment No. 3 by Nixon (beginning on page 471, amendment packet) by adding a new item:

Amend **CSHB 4** on page 46, line 13, by striking ARTICLE 9 and substituting a new ARTICLE 9 to read as follows:

ARTICLE 9. LIMITATIONS IN CIVIL ACTIONS OF LIABILITIES RELATING TO CERTAIN MERGERS OR CONSOLIDATIONS

SECTION 9.01. Title 6, Civil Practice and Remedies Code, is amended by adding Chapter 149 to read as follows:

CHAPTER 149. LIMITATIONS IN CIVIL ACTIONS OF LIABILITIES RELATING TO CERTAIN MERGERS OR CONSOLIDATIONS

Sec. 149.001. DEFINITIONS. In this chapter:

(1) "Asbestos claim" means any claim, wherever or whenever made, for damages, losses, indemnification, contribution, or other relief arising out of, based on, or in any way related to asbestos, including:

(A) property damage caused by the installation, presence, or removal of asbestos;

(B) the health effects of exposure to asbestos, including any claim for:

(i) personal injury or death;

(ii) mental or emotional injury;

(iii) risk of disease or other injury; or

(iv) the costs of medical monitoring or surveillance; and

(C) any claim made by or on behalf of any person exposed to asbestos or any representative, spouse, parent, child, or other relative of the person.

(2) "Corporation" means a corporation for profit, including:

(A) a domestic business corporation organized under the laws of this state; or

(B) a foreign corporation organized under laws other than the laws of this state that has a certificate of authority to transact business in this state or is doing business in this state.

(3) "Successor asbestos-related liabilities" means any liabilities, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due, that are related in any way to asbestos claims that were assumed or incurred by a corporation as a result of or in connection with a merger or consolidation, or the plan of merger or consolidation related to the merger or consolidation, with or into another corporation or that are related in any way to asbestos claims based on the exercise of control or the ownership of stock of the corporation before the merger or consolidation. The term includes liabilities that, after the time of the merger or consolidation for which the fair market value of total gross assets is determined under Section 149.004, were or are paid or otherwise discharged, or committed to be paid or otherwise discharged, by or on behalf of the corporation, or by or on behalf of a transferor, in connection with settlements, judgments, or other discharges in this state or another jurisdiction.

(4) "Transferor" means a corporation from which successor asbestos-related liabilities are assumed or incurred.

Sec. 149.002. APPLICABILITY. (a) The limitation in Section 149.003 applies to a merger or consolidation effected under the laws of this state or another jurisdiction.

(b) The limitation in Section 149.003 does not apply to:

(1) workers' compensation benefits paid by or on behalf of an employer to an employee under the Texas Workers' Compensation Act, Subtitle A, Title 5, Labor Code, or comparable workers' compensation law of another jurisdiction;

(2) any claim against a corporation that does not constitute a successor asbestos-related liability;

(3) an insurance corporation, as that term is used in the Insurance Code;
or

(4) any obligations under the National Labor Relations Act (29 U.S.C. Section 151 et seq.), as amended, or under any collective bargaining agreement.

Sec. 149.003. LIMITATION ON SUCCESSOR ASBESTOS-RELATED LIABILITIES. (a) Except as provided by Subsection (b), the cumulative successor asbestos-related liabilities of a corporation are limited to the fair market value of the total gross assets of the transferor determined as of the time of the merger or consolidation. The corporation does not have any responsibility for successor asbestos-related liabilities in excess of this limitation.

(b) If the transferor had assumed or incurred successor asbestos-related liabilities in connection with a prior merger or consolidation with a prior transferor, the cumulative successor asbestos-related liabilities of a corporation are limited to the fair market value of the total gross assets of the prior transferor, determined as of the time of the earlier merger or consolidation.

Sec. 149.004. ESTABLISHING FAIR MARKET VALUE OF TOTAL GROSS ASSETS. (a) A corporation may establish the fair market value of total gross assets for the purpose of the limitation under Section 149.003 through any method reasonable under the circumstances, including:

(1) by reference to the going concern value of the assets or to the purchase price attributable to or paid for the assets in an arm's-length transaction; or

(2) in the absence of other readily available information from which fair market value can be determined, by reference to the value of the assets recorded on a balance sheet.

(b) Total gross assets include intangible assets.

Sec. 149.006. ADJUSTMENT. (a) The fair market value of total gross assets at the time of a merger or consolidation increases annually at a rate equal to the sum of:

(1) the prime rate as listed in the first edition of the Wall Street Journal published for each calendar year since the merger or consolidation; and

(2) one percent.

(b) The rate in Subsection (a) is not compounded.

(c) The adjustment of fair market value of total gross assets continues as provided under Subsection (a) until the date the adjusted value is exceeded by the cumulative amounts of successor asbestos-related liabilities paid or committed to be paid by or on behalf of the corporation, or by or on behalf of a transferor, after the time of the merger or consolidation for which the fair market value of total gross assets is determined.

Sec. 149.007. SCOPE OF CHAPTER. The courts in this state shall apply, to the fullest extent permissible under the United States Constitution, this state's substantive law, including the limitation under this chapter, to the issue of successor asbestos-related liabilities.

SECTION 9.02. Chapter 149, Civil Practice and Remedies Code, as added by this article, applies to all asbestos claims, including existing asbestos claims, and all litigation, including existing litigation, in the courts of this state, without regard to whether a suit was commenced before, on, or after the effective date of this article.

Amendment No. 5 was withdrawn.

Vote Reconsidered - Amendment No. 4

Representative Nixon moved to reconsider the vote by which Amendment No. 4 was adopted.

The motion to reconsider prevailed.

Amendment No. 4 was withdrawn.

Amendment No. 3 was adopted without objection.

Amendment No. 6

Representative Nixon offered the following amendment to **CSHB 4**:
Floor Packet Page No. 495

Amend **CSHB 4** as follows:

(1) On page 12, strike lines 6 through 16 and substitute the following:

Sec. 42.002. APPLICABILITY AND EFFECT. (a) This chapter does not apply to:

(1) an action in which a class has been certified; or

(2) an action by or against a governmental unit.

(b) Without regard to whether an action is brought by itself or in conjunction with other actions, this chapter does not apply to an action:

(1) brought under the Family Code;

(2) brought under Chapter 27, Property Code;

(3) brought under the Tax Code;

(4) brought on behalf of a minor or person of unsound mind;

(5) to collect workers' compensation benefits under Subtitle A, Title 5,

Labor Code;

(6) the Longshore and Harbor Workers' Compensation Act (33 U.S.C. Section 901, et seq), as amended;

(7) the Jones Act (46 U.S.C. Section 688), as amended;

(8) brought in small claims court or justice court; or

(9) brought by a homeowners association to enforce deed restrictions or to collect delinquent fees, dues, or assessments.

(2) Strike page 12, line 27, through page 13, line 11.

(3) On page 13, line 12, strike "Sec. 42.004." and substitute "Sec. 42.003."

(4) On page 13, line 16, strike "Sec. 42.005." and substitute "Sec. 42.004."

(5) Strike page 15, line 17, through page 16, line 16, and substitute:

Sec. 42.055. AWARD OF LITIGATION COSTS. (a) Any defendant who makes a settlement offer under this chapter to a claimant seeking monetary relief shall recover litigation costs from the claimant if:

(1) the settlement offer is rejected;

(2) the amount of monetary relief to be awarded in the judgement, exclusive of any litigation costs awarded under this chapter and exclusive of any attorney's fees, expenses, and costs incurred by the claimant after rejection of the offer, is more favorable to the defendant or group of defendants who made the settlement offer than the settlement offer; and

(3) the difference between the amount of monetary relief to be awarded to the claimant in the judgment, exclusive of any litigation costs awarded under this chapter and exclusive of any attorney's fees, expenses, and costs incurred by the claimant after rejection of the offer, and the amount of the settlement offer is equal to or greater than 10 percent of the amount of the settlement offer.

(b) Any defendant who makes a settlement offer to a claimant seeking nonmonetary relief, other than injunctive relief, may recover litigation costs from the claimant if:

(1) the settlement offer is rejected; and

(2) the judgment, exclusive of any litigation costs awarded under this chapter and exclusive of any attorney's fees, expenses, and costs incurred by the claimant after rejection of the offer, is more favorable to the defendant or group of defendants who made the settlement offer than the settlement offer.

(6) On page 16, line 17, strike "(d)" and substitute "(c)".

(7) On page 16, line 22, strike "(e)" and substitute "(d)".

(8) On page 16, line 26, strike "(f)" and substitute "(e)".

(9) On page 17, line 6, strike "(g)" and substitute "(f)".

(10) On page 17, line 11, strike "(h)" and substitute "(g)".

(11) Strike page 37, line 22, through page 38, line 17, and substitute the following:

Sec. 16.012. PRODUCTS LIABILITY[~~;- MANUFACTURING EQUIPMENT~~]. (a) In this section, "claimant,"~~[-~~

~~[(1) "Claimant,"]~~ "products liability action," "seller," and "manufacturer" have the meanings assigned by Section 82.001.

~~[(2) "Manufacturing equipment" means equipment and machinery used in the manufacturing, processing, or fabrication of tangible personal property but does not include agricultural equipment or machinery.]~~

(12) On page 38, line 18, strike "Subsection (c)" and substitute "Subsections [Subsection] (c) and (d)".

(13) On page 39, strike lines 3 through 6 and substitute the following:

(d) This section does not apply to a products liability action in which the claimant alleges a product caused a disease the symptoms of which did not, before the end of 15 years after the date of the sale of the product by the defendant, manifest themselves to a degree and for a duration that would put a reasonable person on notice that the person suffers some injury. This section does not reduce a limitations period for a cause of action described by this subsection ~~[that applies to a products liability action involving manufacturing equipment]~~ that accrues before the end of the limitations period under this section.

(14) On page 39, between lines 11 and 12, insert the following appropriately numbered SECTION and renumber existing SECTIONS of the ARTICLE appropriately:

SECTION _____. Section 82.001(2), Civil Practice and Remedies Code, is amended to read as follows:

(2) "Products liability action" means any action against a manufacturer or seller for recovery of damages or other relief for harm ~~[arising out of personal injury, death, or property damage]~~ allegedly caused by a defective product, whether the action is based in strict tort liability, strict products liability, negligence, misrepresentation, breach of express or implied warranty, or any other theory or combination of theories, and whether the relief sought is recovery of damages or any other legal or equitable relief, including a suit for:

(A) injury or damage to or loss of real or personal property;

(B) personal injury;

(C) wrongful death;

(D) economic loss; or

(E) declaratory, injunctive, or other equitable relief.

(15) On page 40, line 10, after the semicolon, strike "or".

(16) On page 40, line 14, between "defect" and the period, insert the following:

": or

(5) that the manufacturer of the product is:

(A) insolvent; or

(B) not subject to the jurisdiction of the court".

(17) On page 40, line 22, strike "required" and substitute "approved".

(18) On page 41, line 11, strike "A" and substitute "In a products liability action brought against a product manufacturer or seller, there is a rebuttable presumption that the".

(19) On page 41, line 12, strike ", distributor,".

(20) On page 41, line 13, strike "allegedly".

(21) On page 41, line 15, strike ", distributor,".

(22) On page 41, lines 15 and 16, strike "proves by a preponderance of the evidence" and substitute "establishes".

(23) On page 41, line 18, strike "state or".

(24) On page 41, line 19, strike "state or".

(25) On page 41, line 20, after "risk that" insert "allegedly".

(26) On page 41, lines 21 and 22, strike ", unless the claimant proves by clear and convincing evidence" and substitute ". The claimant may rebut this presumption by establishing".

(27) On page 41, line 22, strike "state or".

(28) On page 41, line 23, strike "grossly".

(29) On page 41, line 25, strike "A" and substitute "In a products liability action brought against a product manufacturer or seller, there is a rebuttable presumption that the".

(30) On page 41, line 25, strike ", distributor,".

(31) On page 42, line 1, strike ", distributor,".

(32) On page 42, lines 1 and 2, strike "proves by a preponderance of the evidence" and substitute "establishes".

(33) On page 42, line 2, strike "premarket" and substitute "pre-market".

(34) On page 42, line 3, strike "an agency of the state or" and substitute "the".

(35) On page 42, line 3, between "government," and "that", insert "or an agency of the federal government,".

(36) On page 42, line 4, between "the" and "agency's", insert "government's or".

(37) On page 42, line 5, strike "premarket" and substitute "pre-market".

(38) On page 42, line 7, between "for sale by the" and "agency", insert "government or".

(39) On page 42, lines 7 and 8, strike ", unless the claimant proves by clear and convincing evidence" and substitute ". The claimant may rebut this presumption by establishing".

(40) On page 42, line 10, strike "premarket" and substitute "pre-market".

(41) On page 42, line 10, strike "grossly".

(42) On page 42, line 12, strike "premarket" and substitute "pre-market".

(43) On page 42, line 14, between "to the" and "agency", insert "government or".

(44) On page 42, line 14, strike "required".

(45) On page 42, line 19, between "by the" and "agency", insert "federal government or an".

(46) On page 42, line 19, between "agency" and the period, insert "of the federal government".

(47) Strike existing Article 15 (page 95, line 13, through page 96, line 12) and substitute the following:

ARTICLE 15. CLAIMS AGAINST SCHOOL DISTRICTS TRUSTEES AND
EMPLOYEES OF ELEMENTARY AND SECONDARY SCHOOLS

SECTION 15.01. Subchapter C, Chapter 11, Education Code, is amended by adding Section 11.064 to read as follows:

Sec. 11.064. CIVIL IMMUNITY. A member of the board of trustees of a school district is considered to be a professional employee of the district for purposes of Subchapter B, Chapter 22.

SECTION 15.02. Subchapter B, Chapter 22, Education Code, is amended by amending Section 22.051 and adding Sections 22.0511–22.0517 to read as follows:

Sec. 22.051. DEFINITION. In this subchapter, "professional employee of a school district" includes:

(1) a superintendent, principal, teacher, supervisor, social worker, counselor, nurse, and teacher's aide employed by a school district;

(2) a teacher employed by a company that contracts with a school district to provide the teacher's services to the district;

(3) a student in an education preparation program participating in a field experience or internship;

(4) a school bus driver certified in accordance with standards and qualifications adopted by the Department of Public Safety; and

(5) any other person employed by a school district whose employment requires certification and the exercise of discretion.

Sec. 22.0511. IMMUNITY FROM LIABILITY [FOR PROFESSIONAL EMPLOYEES]. (a) A professional employee of a school district is not personally liable for any act that is incident to or within the scope of the duties of the employee's position of employment and that involves the exercise of judgment or discretion on the part of the employee, except in circumstances in which a professional employee uses excessive force in the discipline of students or negligence resulting in bodily injury to students.

(b) This section does not apply to the operation, use, or maintenance of any motor vehicle.

~~[(c) In this section, "professional employee" includes:~~

~~(1) a superintendent, principal, teacher, supervisor, social worker, counselor, nurse, and teacher's aide;~~

~~(2) a student in an education preparation program participating in a field experience or internship;~~

~~(3) a school bus driver certified in accordance with standards and qualifications adopted by the Department of Public Safety; and~~

~~(4) any other person whose employment requires certification and the exercise of discretion.]~~

Sec. 22.0512. PROTECTION UNDER FEDERAL LAW. (a) In this section, "school" and "teacher" have the meaning assigned by 20 U.S.C. Section 6733 and its subsequent amendments.

(b) In addition to the immunity provided by Section 22.0511 and other state law, a teacher is entitled to any immunity and other protections afforded under the Paul D. Coverdell Teacher Protection Act of 2001 (20 U.S.C. Section 6731 et seq.) and its subsequent amendments.

(c) This section may not be construed as limiting or abridging any immunity or protection afforded a teacher under state law.

Sec. 22.0513. NOTICE OF CLAIM. (a) Not later than the 90th day before the date a person files an action against a professional employee of a school district involving an act that is incident to or within the scope of duties of the employee's position of employment, the person must give written notice to the employee of the claim, reasonably describing the act from which the claim arises.

(b) A professional employee of a school district against whom an action is pending who did not receive written notice as required by Subsection (a) may file a plea in abatement not later than the 30th day after the date the employee files an original answer in the court in which the action is pending.

(c) The court shall abate the action if the court, after a hearing, finds that the employee is entitled to an abatement because notice was not provided as required by this section.

(d) An abatement under Subsection (c) continues until the 90th day after the date written notice is given to the employee as provided by Subsection (a).

Sec. 22.0514. EXHAUSTION OF REMEDIES. A person may not file an action against a professional employee of a school district involving an act that is incident to or within the scope of duties of the employee's position of employment unless the person has exhausted any remedies provided by the school district for resolving the complaint.

Sec. 22.0515. LIMITATION ON DAMAGES. The liability of a professional employee of a school district for an act incident to or within the scope of duties of the employee's position of employment may not exceed \$100,000.

Sec. 22.0516. ALTERNATIVE DISPUTE RESOLUTION. A court in which an action is brought against a professional employee of a school district involving an act that is incident to or within the scope of duties of the employee's position of employment may refer the case to an alternative dispute resolution procedure as described by Chapter 154, Civil Practice and Remedies Code.

Sec. 22.0517. RECOVERY OF ATTORNEY'S FEES IN ACTION AGAINST PROFESSIONAL EMPLOYEE. In an action against a professional employee of a school district involving an act that is incident to or within the scope of duties of the employee's position of employment and brought against the employee in the employee's individual capacity, the employee is entitled to recover attorney's fees and court costs from the plaintiff if the employee is immune from liability under this subchapter.

SECTION 15.03. Section 22.053(a), Education Code, is amended to read as follows:

(a) A volunteer who is serving as a direct service volunteer of a school district is immune from civil liability to the same extent as a professional employee of a school district under Section 22.0511 [~~22.051~~].

SECTION 15.04. Section 30.024(c), Education Code, is amended to read as follows:

(c) In addition to any other federal and state statutes limiting the liability of employees at the school, Sections 22.0511, 22.0512 [~~22.051~~], 22.052, and 22.053, respectively, apply to professional employees and volunteers of the school.

SECTION 15.05. Section 30.055(c), Education Code, is amended to read as follows:

(c) In addition to any other federal and state statutes limiting the liability of employees at the school, Sections 22.0511, 22.0512 [~~22.051~~], 22.052, and 22.053, respectively, apply to professional employees and volunteers of the school.

SECTION 15.06. Section 105.301(e), Education Code, is amended to read as follows:

(e) The academy is not subject to the provisions of this code, or to the rules of the Texas Education Agency, regulating public schools, except that:

(1) professional employees of the academy are entitled to the limited liability of an employee under Section 22.0512 [~~22.051~~] or 22.052;

(2) a student's attendance at the academy satisfies compulsory school attendance requirements; and

(3) for each student enrolled, the academy is entitled to allotments from the foundation school program under Chapter 42 as if the academy were a school district, except that the academy has a local share applied that is equivalent to the local fund assignment of the Denton Independent School District.

SECTION 15.07. This article applies only to an action for damages involving conduct that occurs on or after September 1, 2003. An action for damages involving conduct that occurs before September 1, 2003, is governed by the law in effect on the date the conduct occurs, and the former law is continued in effect for that purpose.

(48) On page 96, insert a new article 16 to read as follows and renumber subsequent articles and sections appropriately:

ARTICLE 16. ADMISSIBILITY OF CERTAIN EVIDENCE IN CIVIL ACTIONS

SECTION 16.01. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.060 to read as follows:

Sec. 32.060. ADMISSIBILITY OF CERTAIN EVIDENCE RELATING TO NOT-FOR-PROFIT NURSING INSTITUTIONS. (a) The following are not admissible as evidence in a civil action:

(1) any finding by the department that a not-for-profit institution licensed under Chapter 242, Health and Safety Code, has violated a standard for participation in the medical assistance program under this chapter; and

(2) the fact of the assessment of a monetary penalty against a not-for-profit institution under Section 32.021 or the payment of the penalty by an institution.

(b) This section does not apply in an enforcement action in which the state or an agency or political subdivision of the state is a party.

SECTION 16.02. Subchapter A, Chapter 242, Health and Safety Code, is amended by adding Section 242.017 to read as follows:

Sec. 242.017. ADMISSIBILITY OF CERTAIN EVIDENCE IN CIVIL ACTIONS. (a) The following are not admissible as evidence in a civil action:

(1) any finding by the department that a not-for-profit institution has violated this chapter or a rule adopted under this chapter; and

(2) the fact of the assessment of a penalty against a not-for-profit institution under this chapter or the payment of the penalty by an institution.

(b) This section does not apply in an enforcement action in which the state or an agency or political subdivision of the state is a party.

SECTION 16.03. The following laws are repealed:

(1) Sections 32.021(i) and (k), Human Resources Code; and

(2) Section 242.050, Health and Safety Code, as added by Chapter 1284, Acts of the 77th Legislature, Regular Session, 2001.

SECTION 16.04. (a) Except as provided by subsection (b) of this section, this article applies only to a suit commenced or pending on or after the effective date of this article.

(b) This article does not apply to a suit in which the trial on the merits commenced on or before the effective date of this article; that suit is governed by the law in effect immediately before the change in law made by this article, and that law is continued in effect for that purpose.

(49) On page 96, line 22, insert a new appropriately numbered article to read as follows and renumber subsequent articles and sections appropriately:

ARTICLE _____. LIMITATIONS IN CIVIL ACTIONS OF LIABILITIES
RELATING TO CERTAIN MERGERS OR CONSOLIDATIONS

SECTION _____.01. Title 6, Civil Practice and Remedies Code, is amended by adding Chapter 149 to read as follows:

CHAPTER 149. LIMITATIONS IN CIVIL ACTIONS OF LIABILITIES
RELATING TO CERTAIN MERGERS OR CONSOLIDATIONS

Sec. 149.001. DEFINITIONS. In this chapter:

(1) "Asbestos claim" means any claim, wherever or whenever made, for damages, losses, indemnification, contribution, or other relief arising out of, based on, or in any way related to asbestos, including:

(A) property damage caused by the installation, presence, or removal of asbestos;

(B) the health effects of exposure to asbestos, including any claim for:

(i) personal injury or death;

(ii) mental or emotional injury;

(iii) risk of disease or other injury; or

(iv) the costs of medical monitoring or surveillance; and.

(C) any claim made by or on behalf of any person exposed to asbestos, or a representative, spouse, parent, child, or other relative of the person.

(2) "Corporation" means a corporation for profit, including:

(A) a domestic business corporation organized under the laws of this state; or,

(B) a foreign corporation organized under laws other than the laws of this state that has a certificate of authority to transact business in this state or is doing business in this state.

(3) "Successor asbestos-related liabilities" means any liabilities, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due, that are related in any way to asbestos claims that were assumed or incurred by a corporation as a result of or in connection with a merger or consolidation, or the plan of merger or consolidation related to the merger or consolidation, with or into another corporation or that are related in any way to asbestos claims based on the exercise of control or the ownership of stock of the corporation before the merger or consolidation. The term includes liabilities that, after the time of the merger or consolidation for which the fair market value of total assets is determined under Section 149.004, were or are paid or otherwise discharged, or committed to be paid or otherwise discharged, by or on behalf of the corporation, or by or on behalf of a transferor, in connection with settlements, judgments, or other discharges in this state or another jurisdiction.

(4) "Transferor" means a corporation from which successor asbestos-related liabilities are assumed or incurred.

Sec. 149.002. APPLICABILITY. (a) The limitation in Section 149.003 applies to a merger or consolidation effected under the laws of this state or another jurisdiction.

(b) The limitation in Section 149.003 does not apply to:

(1) workers' compensation benefits paid by or on behalf of an employer to an employee under the Texas Workers' Compensation Act, Subtitle A, Title 5, Labor Code, or comparable workers' compensation law of another jurisdiction;

(2) any claim against a corporation that does not constitute a successor asbestos-related liability;

(3) an insurance corporation, as that term is used in the Insurance Code;
or

(4) any obligations under the National Labor Relations Act (29 U.S.C. Section 151 et seq.), as amended, or under any collective bargaining agreement.

Sec. 149.003. LIMITATION ON SUCCESSOR ASBESTOS-RELATED LIABILITIES. (a) Except as provided by Subsection (b), the cumulative successor asbestos-related liabilities of a corporation are limited to the fair market value of the total assets of the transferor determined as of the time of the merger or consolidation. The corporation does not have any responsibility for successor asbestos-related liabilities in excess of this limitation.

(b) If the transferor has assumed or incurred successor asbestos-related liabilities in connection with a prior merger or consolidation with a prior transferor, the cumulative successor asbestos-related liabilities of a corporation are limited to the fair market value of the total assets of the prior transferor, determined as of the time of the earlier merger or consolidation.

Sec. 149.004. ESTABLISHING FAIR MARKET VALUE OF TOTAL ASSETS. (a) A corporation may establish the fair market value of total assets for the purpose of the limitation under Section 149.003 through any method reasonable under the circumstances including:

(1) by reference to the going concern value of the assets or to the purchase price attributable to or paid for the assets in an arm's-length transaction; or

(2) in the absence of other readily available information from which fair market value can be determined, by reference to the value of the assets recorded on a balance sheet.

(b) Total assets include intangible asset.

(c) A showing by the corporation of a reasonable determination of the fair market value of total assets is prima facie evidence of their fair market value.

Sec. 149.005. CONTESTING FAIR MARKET VALUE. After a corporation has established a reasonable determination of the fair market value of total assets under Section 149.004, a claimant disputing that determination has the burden of establishing a different fair market value of the assets.

Sec. 149.006. ADJUSTMENT. (a) The fair market value of total assets at the time of a merger or consolidation increases annually at a rate equal to the sum of:

(1) the prime rate as listed in the first edition of the Wall Street Journal published for each calendar year since the merger or consolidation; and

(2) one percent.

(b) The rate in Subsection (a) is not compounded.

(c) The adjustment of fair market value of total assets continues as provided under Subsection (a) until the date the adjusted value is exceeded by the cumulative amounts of successor asbestos-related liabilities paid or committed to be paid by or on behalf of the corporation, or by or on behalf of a transferor, after the time of the merger or consolidation for which the fair market value of total assets is determined.

Sec. 149.007. SCOPE OF CHAPTER. The courts in this state shall apply, to the fullest extent permissible under the United States Constitution, this state's substantive law, including the limitation under this chapter, to the issue of successor asbestos-related liabilities.

SECTION _____.02. Chapter 149, Civil Practice and Remedies Code, as added by this article, applies to all asbestos claims, including existing asbestos claims, and all litigation, including existing litigation, in the courts of this state, without regard to whether a suit was commenced before, on, or after the effective date of this article.

(Speaker in the chair)

Amendment No. 7

Representative Dunnam offered the following amendment to Amendment No. 6:

Amend Amendment No. 6 to **CSHB 4** by Nixon as follows:

(1) On page 10 of the amendment, strike line 2 through page 12, line 31.

(Hilderbran in the chair)

Representative Hartnett moved to table Amendment No. 7.

The motion to table prevailed.

Amendment No. 8

Representative Dunnam offered the following amendment to Amendment No. 6:

Amend Amendment No. 6 to **CSHB 4** by Nixon as follows:

(1) On page 11, line 24 of the amendment, insert the following after "consolidation" and before the period:

"and any policies of insurance".

Amendment No. 8 was adopted without objection.

Amendment No. 9

Representative Dunnam offered the following amendment to Amendment No. 6:

Amend Amendment No. 6 to **CSHB 4** by Nixon as follows:

(1) On page 12, strike lines 28 through 31 of the amendment and substitute the following:

"SECTION ____ .02. Chapter 149, Civil Practice and Remedies Code does not apply to successor asbestos-related liabilities that were assumed or incurred before the effective date of this article."

Representative Hartnett moved to table Amendment No. 9.

A record vote was requested.

The motion to table prevailed by (Record 91): 98 Yeas, 45 Nays, 3 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Casteel; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Dukes; Eissler; Elkins; Ellis; Farabee; Flores; Flynn; Gattis; Geren; Giddings; Goolsby; Griggs; Grusendorf; Gutierrez; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hill; Homer; Hope; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laubenberg; Lewis; Madden; Marchant; McCall; McClendon; McReynolds; Mercer; Merritt; Miller; Morrison; Mowery; Nixon;

Paxton; Phillips; Pitts; Reyna; Riddle; Ritter; Rose; Seaman; Smith, T.; Smith, W.; Solomons; Stick; Swinford; Talton; Taylor; Truitt; Van Arsdale; Villarreal; West; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Burnam; Canales; Capelo; Castro; Chavez; Coleman; Davis, Y.; Deshotel; Dunnam; Dutton; Edwards; Eiland; Farrar; Gallego; Garza; Goodman; Guillen; Hochberg; Hodge; Hopson; Jones, J.; Laney; Luna; Mabry; Martinez Fischer; Menendez; Moreno, J.; Moreno, P.; Naishtat; Noriega; Oliveira; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Rodriguez; Solis; Telford; Thompson; Turner; Wilson; Wise.

Present, not voting — Mr. Speaker; Hilderbran(C); Wolens.

Absent — Bailey; Smithee; Uresti.

Amendment No. 10

Representative Dunnam offered the following amendment to Amendment No. 6:

Amend Amendment No. 6 to **CSHB 4** by Nixon as follows:

(1) On page 12 of the amendment, after line 27, insert a new Sec. 149.008 to read as follows:

"Sec. 149.008. SEVERABILITY. Notwithstanding any other law, if any provision of this chapter or any provision of the general laws regarding applicability or effectiveness of this chapter is determined to be unconstitutional under the constitution of this state or the United States, this entire chapter shall have no force or effect."

Representative Hartnett moved to table Amendment No. 10.

The motion to table prevailed.

MESSAGE FROM THE SENATE

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 3).

CSHB 4 - (consideration continued)

Amendment No. 11

Representative Dunnam offered the following amendment to Amendment No. 6:

Amend Amendment No. 6 to **CSHB 4** by Nixon as follows:

(1) On page 12, line 27 of the amendment insert the following between "liabilities" and the period:

"and to the extent the underlying transaction that transferred the assets at issue bear a reasonable relationship to the State of Texas".

Representative Hartnett moved to table Amendment No. 11.

The motion to table prevailed.

Amendment No. 12

Representative Hartnett offered the following amendment to Amendment No. 6:

Amend Amendment No. 6 by Nixon to **CSHB 4** (beginning on page 495, amendment packet) on page 12 of the amendment, by striking lines 8-13.

Amendment No. 12 was adopted without objection.

Amendment No. 13

Representative Hartnett offered the following amendment to Amendment No. 6:

Amend Amendment No. 6 by Nixon to **CSHB 4** (beginning on page 495, amendment packet) as follows:

(1) On page 11 of the amendment, line 4, between "total" and "assets", insert "gross".

(2) On page 11 of the amendment, line 23, between "total" and "assets", insert "gross".

(3) On page 11 of the amendment, line 28, between "total" and "assets", insert "gross".

(4) On page 11 of the amendment, line 30, between "TOTAL" and "ASSETS", insert "GROSS".

(5) On page 12 of the amendment, line 1, between "total" and "assets", insert "gross".

(6) On page 12 of the amendment, line 7, between "total" and "assets", insert "gross".

(7) On page 12 of the amendment, line 9, between "total" and "assets", insert "gross".

(8) On page 12 of the amendment, line 11, between "total" and "assets", insert "gross".

(9) On page 12 of the amendment, line 24, between "total" and "assets", insert "gross".

Amendment No. 13 was adopted without objection.

Amendment No. 14

Representative Wohlgemuth offered the following amendment to Amendment No. 6:

Amend Amendment No. 6 by Nixon to **CSHB 4** (beginning on page 495, amendment packet) as follows:

(1) On page 9, lines 3 and 4, strike "NOT-FOR-PROFIT".

(2) On page 9, line 6, strike "a not-for-profit" and substitute "an".

(3) On page 9, line 9, strike "a not-for-profit" and substitute "an".

(4) On page 9, line 17, strike "a not-for-profit" and substitute "an".

(5) On page 9, line 19, strike "a not-for-profit" and substitute "an".

Representative Eiland moved to table Amendment No. 14.

A record vote was requested.

The motion to table was lost by (Record 92): 58 Yeas, 86 Nays, 2 Present, not voting.

Yeas — Alonzo; Burnam; Canales; Castro; Chavez; Coleman; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Farrar; Flores; Gallego; Garza; Giddings; Goodman; Guillen; Gutierrez; Hartnett; Hochberg; Hodge; Homer; Hope; Hopson; Jones, J.; Laney; Lewis; Luna; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Moreno, J.; Moreno, P.; Naishtat; Noriega; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Rodriguez; Rose; Smithee; Solis; Talton; Telford; Thompson; Turner; Villarreal; Wilson; Wise; Wolens.

Nays — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Capelo; Casteel; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Ellis; Farabee; Flynn; Gattis; Geren; Goolsby; Griggs; Grusendorf; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Heflin; Hagar; Hill; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laubenberg; Madden; Marchant; McCall; Mercer; Merritt; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Reyna; Riddle; Ritter; Seaman; Smith, T.; Smith, W.; Solomons; Stick; Swinford; Taylor; Truitt; Van Arsdale; West; Wohlgemuth; Wong; Woolley; Zedler.

Present, not voting — Mr. Speaker; Hilderbran(C).

Absent — Bailey; Oliveira; Uresti.

REASON FOR VOTE

I want to ensure that we have more nursing home availability for the growing number of our aging population.

B. Cook

Amendment No. 14 was adopted without objection.

Amendment No. 15

Representative Y. Davis offered the following amendment to Amendment No. 6:

Amend Amendment No. 6 by Nixon to **CSHB 4** (beginning on page 495, amendment packet) by striking item (47) of the amendment (page 5, line 12, through 8, line 27) and substituting the following:

(47) Strike Article 15 of the bill (page 95, line 13, through page 96, line 12) and renumber subsequent articles of the bill appropriately.

Representative Nixon moved to table Amendment No. 15.

A record vote was requested.

The motion to table prevailed by (Record 93): 91 Yeas, 54 Nays, 2 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Capelo; Casteel; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Dukes; Eissler; Elkins; Ellis; Flynn; Gattis; Geren; Goolsby; Griggs; Grusendorf; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hill; Hope; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Keel; Keffer, B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Madden; Marchant; McCall; Merritt; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Reyna; Riddle; Ritter; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solomons; Stick; Swinford; Talton; Taylor; Truitt; Van Arsdale; West; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Burnam; Canales; Castro; Chavez; Coleman; Davis, Y.; Deshotel; Dunnam; Dutton; Edwards; Eiland; Farabee; Farrar; Flores; Gallego; Garza; Giddings; Guillen; Gutierrez; Hochberg; Hodge; Homer; Hopson; Jones, J.; Lewis; Luna; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Mercer; Moreno, J.; Moreno, P.; Naishtat; Noriega; Oliveira; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Rodriguez; Solis; Telford; Thompson; Turner; Uresti; Villarreal; Wilson; Wise; Wolens.

Present, not voting — Mr. Speaker; Hilderbran(C).

Absent — Bailey; Goodman.

STATEMENT OF VOTE

I was shown voting no on Record No. 93. I intended to vote yes.

Telford

Amendment No. 16

Representative Homer offered the following amendment to Amendment No. 6:

Amend Amendment No. 6 by Nixon to **CSHB 4** (beginning on page 495, amendment packet) on page 5, line 25, by inserting "substitute teacher" between "teacher," and "supervisor,".

Amendment No. 16 was adopted without objection.

Amendment No. 17

Representative Hochberg offered the following amendment to Amendment No. 6:

Amend Amendment No. 6 by Nixon to **CSHB 4** (beginning on page 495, amendment packet) on page 8, line 17, by striking "Section 22.0512 [~~22.051~~]" or "and substituting "Sections 22.0511, 22.0512, and [~~Section 22.051 or~~]".

Amendment No. 17 was adopted without objection.

Amendment No. 18

Representatives Hochberg and Solomons offered the following amendment to Amendment No. 6:

Amend Amendment No. 6 by Nixon to **CSHB 4** (beginning on page 495, amendment packet) on page 7 of the amendment, by striking lines 17-19.

Amendment No. 18 was adopted without objection.

Amendment No. 19

Representative Hughes offered the following amendment to Amendment No. 6:

Amend Amendment No. 6 by Nixon to **CSHB 4** (beginning on page 495, amendment packet) as follows:

(1) On page 1 of the amendment, line 17, strike "or".

(2) On page 1 of the amendment, strike line 19 and substitute:
delinquent fees, dues, or assessments;

(10) the Federal Employers' Liability Act (45 U.S.C. Section 51 et seq.), as amended;

(11) the Safety Appliance Act (49 U.S.C. Sections 20102, 20301, 20302, 20304, 21302, and 21304), as amended; or

(12) the Locomotive Inspection Act (49 U.S.C. Sections 20102, 20701-20703, 21302, and 21304), as amended.

Amendment No. 19 was adopted without objection.

Amendment No. 20

Representative Eiland offered the following amendment to Amendment No. 6:

Amend the Nixon Amendment found on page 495 of the amendment packet to **CSHB 4** by adding a new item as follows:

On page 7, line 3 and page 8, line 11, between "fund" and "recovered", insert "or as measured by a common benefit"

Amendment No. 20 was adopted without objection.

Amendment No. 21

Representative Eiland offered the following amendment to Amendment No. 6:

Amend Amendment 6 by Nixon to **CSHB 4** (beginning on page 495, amendment packet) on page 1 of the amendment by striking page 1, line 23 through page 2, line 21.

Amendment No. 21 was withdrawn.

Amendment No. 22

Representative Wohlgemuth offered the following amendment to Amendment No. 6:

Amend Amendment 6 by Nixon to **CSHB 4** (beginning on page 495, amendment packet) as follows:

(1) On page 9 of the amendment, between lines 12 and 13, by inserting the following:

(c) Notwithstanding any other provision of this section, evidence described by Subsection (a) is admissible as evidence in a civil action only if:

(1) the evidence relates to a material violation of a standard or assessment of a monetary penalty with respect to:

(A) the particular incident which is the basis of claim being brought;

(B) an incident comparable to the incident that is the basis of the claim in the civil action; or

(C) the particular individual whose personal injury is the basis of the claim being brought in the civil action; and

(2) the violation of the standard or the violation that resulted in the assessment of a monetary penalty is a proximate cause of the injury that is the basis of the claim being brought in the civil action.

(2) On page 9 of the amendment, between lines 22 and 23, by inserting the following:

(c) Notwithstanding any other provision of this section, evidence described by Subsection (a) is admissible as evidence in a civil action only if:

(1) the evidence relates to a material violation of this chapter or a rule adopted under this chapter or assessment of a monetary penalty with respect to:

(A) the particular incident which is the basis of claim being brought in the civil action; or

(B) the particular individual whose personal injury is the basis of the claim being brought in the civil action; and

(2) the violation of the chapter or rule or the violation that resulted in the assessment of a monetary penalty is a proximate cause of the injury that is the basis of the claim being brought in the civil action.

Amendment No. 22 was adopted without objection.

Amendment No. 23

Representative Eiland offered the following amendment to Amendment No. 6:

Amend Amendment No. 6 to **CSHB 4** (beginning on page 495, amendment packet) by striking Item (48) from page 8 of the amendment, line 28, through page 10 of the amendment, line 1.

Representative Wohlgemuth moved to table Amendment No. 23.

A record vote was requested.

The motion to table prevailed by (Record 94): 88 Yeas, 55 Nays, 2 Present, not voting.

Yeas — Allen; Baxter; Berman; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Casteel; Chisum; Christian; Cook, B.; Cook, R.; Corte; Crabb; Crownover; Davis, J.; Dawson; Delisi; Denny; Driver; Eissler; Elkins; Ellis; Flynn; Gattis; Geren; Goodman; Goolsby; Griggs; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Heflin; Hegar; Hill; Hope; Howard; Hughes; Hunter; Hupp; Isett; Jones, D.; Jones, E.; Keel; Keffer,

B.; Keffer, J.; King; Kolkhorst; Krusee; Kuempel; Laubenberg; Madden; Marchant; McCall; Mercer; Merritt; Miller; Morrison; Mowery; Nixon; Paxton; Phillips; Pitts; Reyna; Riddle; Ritter; Seaman; Smith, T.; Smith, W.; Smithee; Solomons; Stick; Swinford; Talton; Taylor; Truitt; Van Arsdale; West; Wohlgemuth; Wong; Woolley; Zedler.

Nays — Alonzo; Burnam; Canales; Castro; Chavez; Coleman; Davis, Y.; Deshotel; Dukes; Dunnam; Dutton; Edwards; Eiland; Farabee; Farrar; Flores; Gallego; Garza; Giddings; Guillen; Gutierrez; Hochberg; Hodge; Homer; Hopson; Jones, J.; Laney; Lewis; Luna; Mabry; Martinez Fischer; McClendon; McReynolds; Menendez; Moreno, J.; Moreno, P.; Naishtat; Noriega; Oliveira; Olivo; Peña; Pickett; Puente; Quintanilla; Raymond; Rodriguez; Rose; Solis; Thompson; Turner; Uresti; Villarreal; Wilson; Wise; Wolens.

Present, not voting — Mr. Speaker; Hilderbran(C).

Absent — Bailey; Capelo; Grusendorf; Telford.

Amendment No. 6, as amended, was adopted without objection.

MESSAGE FROM THE SENATE

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 4).

CSHB 4 - (consideration continued)

Amendment No. 24

Representative Nixon offered the following amendment to **CSHB 4**:

Floor Packet Page No. 493

Amend **CSHB 4** as follows:

(1) On page 4, line 21, strike "its final action on" and substitute "such final action as the agency is authorized regarding".

(2) On page 5, line 6, between "claimant" and ";", insert "and the class".

(3) On page 5, line 9, between "claimant" and ";", insert "and the class".

(4) On page 8, line 17, between "costs" and "actually", insert "of litigation".

(5) On page 11, line 26, after the word "reasonable", insert "and necessary".

(6) On page 12, line 1, after the word "reasonable", insert "and necessary".

(7) On page 13, between lines 19 and 20, insert the following:

Sec. 42.006. APPLICABILITY OF CHAPTER IN RELATION TO CERTAIN CRIMINAL BEHAVIOR. Without regard to whether an action is brought by itself or in conjunction with other actions, this chapter does not apply to an action arising from conduct of the defendant described in any of the following sections of the Penal Code:

(1) Section 49.04 (driving while intoxicated);

(2) Section 49.05 (flying while intoxicated);

(3) Section 49.06 (boating while intoxicated);

(4) Section 49.065 (assembling or operating an amusement ride while intoxicated);

(5) Section 49.07 (intoxication assault); or

(6) Section 49.08 (intoxication manslaughter).

Sec. 42.007. ADDITIONAL APPLICABILITY PROVISION; CERTAIN CRIMINAL BEHAVIOR. Without regard to whether an action is brought by itself or in conjunction with other actions, this chapter does not apply to an action in which the defendant is a person who has engaged in conduct described as a felony in the following Penal Code provisions if the conduct was committed knowingly or intentionally, as defined by Section 6.03(a) and (b), Penal Code:

(A) Section 19.02 (murder);

(B) Section 19.03 (capital murder);

(C) Section 20.03 (kidnapping);

(D) Section 20.04 (aggravated kidnapping);

(E) Section 22.02 (aggravated assault);

(F) Section 22.011 (sexual assault);

(G) Section 22.021 (aggravated sexual assault);

(H) Section 22.04 (injury to a child, elderly individual, or disabled individual);

(I) Section 32.21 (forgery);

(J) Section 32.43 (commercial bribery);

(K) Section 32.45 (misapplication of fiduciary property or property of financial institution);

(L) Section 32.46 (securing execution of a document by deception);

(M) Section 32.47 (fraudulent destruction, removal, or concealment of writing); or

(N) Chapter 31 (theft) the punishment level for which is a felony of the third degree or higher.

(8) Page 17, line 15, between "recovery" and "in", insert ", less any statutory liens,".

Amendment No. 24 was adopted without objection.

Amendment No. 25

Representatives Rose, Nixon, Capelo, Geren, Taylor, McCall, and Menendez offered the following amendment to **CSHB 4**:

Floor Packet Page No. 565

Amend **CSHB 4** by adding the following appropriately numbered ARTICLE and renumbering existing ARTICLES of the bill appropriately:

ARTICLE _____. RATES FOR PROFESSIONAL LIABILITY INSURANCE
FOR PHYSICIANS AND HEALTH CARE PROVIDERS

SECTION _____.01. Chapter 5, Insurance Code, is amended by adding Subchapter R to read as follows:

SUBCHAPTER R. RATES FOR PROFESSIONAL LIABILITY INSURANCE
FOR PHYSICIANS AND HEALTH CARE PROVIDERS

Art. 5.161. FINDINGS. The legislature finds that:

(1) the cost of professional liability insurance for physicians and health care providers, as defined by Section 1.03(a), Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), has been a significant factor in the reduced availability of health care in this state;

(2) legislation under consideration by the regular session of the 78th Legislature should eliminate or significantly reduce the cost of claims under policies of professional liability insurance for physicians and health care providers, and legislation by future legislatures may have the same effect;

(3) while the monetary effect of these legislative changes can be actuarially determined within a reasonable degree of certainty, insurers will delay implementation of rate reductions until they have data evidencing actual loss experience;

(4) delay in implementation of rate reductions will result in a windfall for the insurers benefited by the changes described by this section, and this benefit should be passed on to insureds; and

(5) legislative action in the public interest and within the police power of the state is required to eliminate unnecessary delays to pass these benefits on to the insured physicians and health care providers of this state.

Art. 5.162. SCOPE OF SUBCHAPTER. (a) This subchapter applies to:

(1) any insurer that is authorized to engage in business in this state and that is authorized to write professional liability insurance for physicians and health care providers, including:

(A) a Lloyd's plan;

(B) a reciprocal or interinsurance exchange;

(C) the joint underwriting association established under Article 21.49-3 of this code; and

(D) a self-insurance trust established under Article 21.49-4 of this code; and

(2) a risk retention group and any other type of insurer selling professional liability insurance to a physician or health care provider who provides medical or health care in this state, regardless of whether the insurer is authorized to engage in business in this state.

(b) It is the intent of the legislature that all insurers, including insurers whose rates are not regulated, pass through the savings that accrue from the changes described by Article 5.161 of this code to their policyholders on a prospective basis. To monitor compliance with this legislative directive, the commissioner may require information in rate filings, special data calls, informational hearings, and any other means consistent with other provisions of this code applicable to the affected insurers. Information provided under this subsection is privileged and confidential to the same extent as the information is privileged and confidential under this code or other laws for other insurers described by this article licensed and writing the same line of insurance in this state.

(c) This subchapter applies only to professional liability insurance for physicians and health care providers.

Art. 5.163. EQUITABLE RATE REDUCTION

Sec. 1. HEARING. (a) Not later than September 1 of each year, the commissioner shall hold a rulemaking hearing under Chapter 2001, Government Code, to determine the percentage of equitable reductions in insurance rates required on an individual basis of each insurer writing professional liability insurance for physicians and health care providers.

(b) Not later than October 1 of each year, the commissioner shall issue rules mandating the appropriate rate reductions to rates for professional liability insurance for physicians and health care providers and developed without consideration of the effect of the changes described by Article 5.161 of this code.

(c) The commissioner shall set the percentage of the rate reduction for professional liability insurance for physicians and health care providers and may set different rate reductions for different types of policies. The commissioner's order establishing the rate reductions must be based on the evidence adduced at the rulemaking hearing, including the adequacy of the rate at the time of the hearing. Rates resulting from the rate reductions imposed by this article must comply with Section 3(d), Article 5.15-1, of this code.

(d) The rate reductions adopted under this section are applicable to each policy or coverage delivered, issued for delivery, or renewed on and after January 1, 2004, and to each policy or coverage delivered, issued for delivery, or renewed on and after the 90th day after the date of each subsequent rule adopted under this section. An insurer that is not otherwise rate-regulated but that is subject to this subchapter shall apply the rate reduction to the rates used by the insurer.

(e) Any rule or order of the commissioner that determines, approves, or sets a rate reduction under this section and is appealed or challenged remains in effect during the pendency of the appeal or challenge. During the pendency of the appeal or challenge, an insurer shall use rates that reflect the rate reduction provided in the order being appealed or challenged. The rate reduction is lawful and valid during the appeal or challenge.

Sec. 2. ADMINISTRATIVE RELIEF. (a) Except as provided by Subsection (b) of this section, a rate filed under Articles 5.13-2 and 5.15-1 of this code for professional liability insurance for physicians and health care providers on and after January 1, 2004, and a rate filed under those articles on and after the 90th day following the effective date of a subsequent rule adopted under Section 1(b) of this article, shall reflect each rate reduction imposed under Section 1 of this article.

(b) Notwithstanding Articles 5.13-2 and 5.15-1 of this code, the commissioner shall, after notice and opportunity for hearing, disapprove a filed rate, without regard to whether the rate complies with Articles 5.13-2 and 5.15-1 of this code, if the commissioner finds that the filed rate does not reflect the rate reduction imposed under Section 1 of this article. A proceeding under this section is a contested case under Chapter 2001, Government Code.

(c) The commissioner may approve a filed rate that reflects less than the full amount of the rate reduction imposed by Section 1 of this article if the commissioner determines based on evidence presented by an insurer that:

(1) the actual or anticipated loss experience for the insurer's rating classifications is or will be different than the presumptive rate reduction;

(2) the insurer will be financially unable to continue writing in a particular line of insurance;

(3) the rate reduction required under this article would likely result in placing the insurer in a hazardous financial condition described by Section 2, Article 1.32, of this code; or

(4) the resulting rates for the insurer would be unreasonable or confiscatory to the insurer.

Sec. 3. DURATION OF REDUCTION. Unless the commissioner grants relief under Section 2 of this article, each rate reduction required under Section 1 of this article remains in effect for the period specified in the commissioner's rule or order.

Sec. 4. MODIFICATION. The commissioner may, by bulletin or directive, based on the evidence accumulated by the commissioner before the bulletin or directive is issued, modify a rate reduction mandated by the commissioner under this article if a final, unappealable judgment of a court with appropriate jurisdiction stays the effect of, enjoins, or otherwise modifies or declares unconstitutional any legislation described by Article 5.161 of this code on which the commissioner based the rate reduction.

Sec. 5. HEARINGS AND ORDERS. Notwithstanding Chapter 40 of this code, a rulemaking hearing under this article shall be held before the commissioner or the commissioner's designee. The rulemaking procedures established by this section do not apply to any other rate promulgation proceeding.

Sec. 6. PENDING RATE MATTERS. A rate filed pursuant to a commissioner's order issued before May 1, 2003, is not subject to the rate reductions required by this article before January 1, 2004.

Sec. 7. RECOMMENDATIONS TO LEGISLATURE. The commissioner shall assemble information, conduct hearings, and take other appropriate measures to assess and evaluate changes in the marketplace resulting from the implementation of this article and to report findings and recommendations to the legislature.

Art. 5.164. CONTINGENT ROLLBACK. If a \$250,000 cap on noneconomic damages in all health care liability claims, without exception, becomes constitutional by voter approval of an amendment to the Texas Constitution or is determined to be constitutional by the supreme court, an insurer that delivers, issues for delivery, or renews a policy of professional liability insurance for physicians or health care providers in this state on or after the 30th day after the effective date of the constitutional amendment or the date the cap was determined to be constitutional may not charge more for the policy than 85 percent of the amount the insurer charged that insured for the same coverage immediately before the effective date of the constitutional amendment or the date that the cap was determined to be constitutional, or, if the insurer did not insure that insured immediately before that date, 85 percent of the amount the insurer would have charged that insured. An insurer may petition the commissioner for

an exception to the rate reduction. The commissioner shall grant the exception to the extent that the insurer provides evidence that the rate reduction is confiscatory.

SECTION __.02. The commissioner of insurance is not required to hold a hearing or determine equitable rate reductions under Section 1, Article 5.163, Insurance Code, as added by this article, before the 30th day after the effective date of this article.

Amendment No. 26

Representative Geren offered the following amendment to Amendment No. 25:

On page 1 of Floor Amendment 25, strike lines 3-24.

On page 8, line 6, after "insured", add provided that the rate was adequate and not artificially inflated prior to or after the determination of constitutionality.

On page 8, line 11, insert new subsection (A) that reads:

If the commissioner makes no determination as to a rate reduction in accordance with Article 5.163, Section 1, then an insurer may not charge an insured for professional liability insurance for physicians and health care providers issued or renewed on or after the second anniversary of the 30th day after the effective date of the constitutional amendment containing a \$250,000 cap on noneconomic damages in all health care liability claims or the date the cap was determined to be constitutional and before the third anniversary of the 30th day after the effective date of the constitutional amendment or the date the cap was determined to be constitutional an amount that exceeds 80 percent of the amount the insurer charged or would have charged the insured for the same coverage.

On page 8, after new subsection (A), insert new subsection (B) that reads:

If the commissioner makes no determination as to a rate reduction in accordance with Article 5.163, Section 1, then an insurer may not charge an insured for professional liability insurance for physicians and health care providers issued or renewed on or after the third anniversary of the 30th day after the effective date of the constitutional amendment containing a \$250,000 cap on noneconomic damages in all health care liability claims or the date the cap was determined to be constitutional and before the fourth anniversary of the 30th day after the effective date of the constitutional amendment or the date the cap was determined to be constitutional an amount that exceeds 75 percent of the amount the insurer charged or would have charged the insured for the same coverage.

(Speaker in the chair)

Amendment No. 26 was withdrawn.

COMMITTEE MEETING ANNOUNCEMENTS

The following committee meetings were announced:

Environmental Regulation, upon adjournment today, E1.014, for a public hearing, to consider posted bills and **HB 2579**.

Rules and Resolutions, upon adjournment today, Desk 133, for a formal meeting, to consider the calendar.

Corrections, upon adjournment today, Desk 1, for a formal meeting, to consider **SB 519**.

Criminal Jurisprudence, upon adjournment today, for a public hearing.

Public Education, upon adjournment today, usual committee room.

Agriculture and Livestock, 20 minutes from now, today, E1.026, to finish today's agenda.

State Cultural and Recreational Resources, in 20 minutes, today, to consider posted business.

Regulated Industries, 6:45 p.m. today, as posted.

Select Committee on Health Care Expenditures, upon adjournment today, E1.010, for a public hearing.

Appropriations, continue meeting upon adjournment today.

Business and Industry, 6:45 p.m. today, to consider posted bills.

ADJOURNMENT

Representative Geren moved that the house adjourn until 10 a.m. tomorrow.

The motion prevailed without objection.

The house accordingly, at 6:20 p.m., adjourned until 10 a.m. tomorrow.

ADDENDUM

REFERRED TO COMMITTEES

The following bills and joint resolutions were today laid before the house, read first time, and referred to committees, and the following resolutions were today laid before the house and referred to committees. If indicated, the chair today corrected the referral of the following measures:

List No. 1

HB 2701 (By J. Keffer), Relating to duties and functions of the state fire marshal.

To Insurance.

HB 2702 (By J. Keffer), Relating to immunization programs.

To Public Health.

HB 2703 (By Bailey, Paxton, Dutton, Keel, and Flynn), Relating to admissibility of evidence from unaccredited crime laboratories.

To Criminal Jurisprudence.

HB 2704 (By Bailey, Paxton, Dutton, Keel, and Flynn), Relating to post conviction DNA review in criminal cases; providing a fee.

To Criminal Jurisprudence.

HB 2705 (By Coleman), Relating to the state Medicaid program.

To State Health Care Expenditures, Select.

HB 2706 (By Coleman), Relating to grievance and complaint resolution procedures for certain state employees.

To State Affairs.

HB 2707 (By Dawson), Relating to alternative education programs and juvenile justice alternative education programs for public school students.

To Public Education.

HB 2708 (By Hamilton), Relating to the issuance of Eagle Scout license plates.

To Transportation.

HB 2709 (By Gutierrez), Relating to nonrepairable and salvage motor vehicles and salvage vehicle dealers.

To Transportation.

HB 2710 (By Gutierrez), Relating to restricting written reports required of public school classroom teachers.

To Public Education.

HB 2711 (By Gutierrez), Relating to the availability of a legislative continuance in a judicial matter.

To Judicial Affairs.

HB 2712 (By Gutierrez and Lewis), Relating to the provision of intervention or counseling services to certain persons who have committed family violence and to a process for accrediting those services.

To Juvenile Justice and Family Issues.

HB 2713 (By Gutierrez), Relating to additional interest for default on certain secondary mortgage loans.

To Financial Institutions.

HB 2714 (By McCall), Relating to certain information filed by a person who holds a license issued by, or applies for a license to be issued by the office of the consumer credit commissioner.

To Financial Institutions.

HB 2715 (By Gutierrez), Relating to dental hygiene services or procedures provided under the medical assistance program.

To Public Health.

HB 2716 (By Mowery), Relating to exemptions from permitting requirements for dams and reservoirs on private property.

To Natural Resources.

HB 2717 (By Hartnett), Relating to successor liability in asbestos claims.

To Civil Practices.

HB 2718 (By W. Smith), Relating to the allocation and use of municipal hotel occupancy taxes in certain municipalities bordering bays and estuaries.
To Local Government Ways and Means.

HB 2719 (By Coleman), Relating to mercury contamination in fish and shellfish.
To State Cultural and Recreational Resources.

HB 2720 (By Coleman), Relating to the requirement that a portion of the tax increment of certain tax increment reinvestment zones be used to provide affordable housing.
To Urban Affairs.

HB 2721 (By Gutierrez), Relating to establishing an acanthosis nigricans screening program in certain public and private schools.
To Public Health.

HB 2724 (By Talton), Relating to childcare regulation and the making of false and anonymous complaints.
To Human Services.

HB 2725 (By Talton), Relating to the destruction of records following certain expunctions.
To Criminal Jurisprudence.

HB 2726 (By Talton), Relating to authorizing an owner of inventory to waive the right to have the inventory appraised for ad valorem tax purposes at the price for which it would sell as a unit.
To Local Government Ways and Means.

HB 2727 (By Talton), Relating to the time during which inmates may be considered for release on parole.
To Corrections.

HB 2728 (By Talton), Relating to violations of certain conditions of parole or mandatory supervision; providing criminal penalties.
To Corrections.

HB 2729 (By Talton), Relating to the regulation of bail bond sureties; providing penalties.
To Criminal Jurisprudence.

HB 2730 (By Talton), Relating to business leave time accounts for peace officers in certain municipalities and counties.
To Urban Affairs.

HB 2731 (By Talton), Relating to procedures governing adoption of zoning regulations and district boundaries.
To Land and Resource Management.

HB 2732 (By Talton), Relating to certain municipal orders required to be filed with the municipal secretary or clerk.
To Urban Affairs.

HB 2733 (By Talton), Relating to the administration of a polygraph examination to a peace officer.

To Law Enforcement.

HB 2734 (By Talton), Relating to general zoning regulations.

To Land and Resource Management.

HB 2735 (By Deshotel), Relating to the provision of medications and medical supplies under the medical assistance program.

To State Health Care Expenditures, Select.

HB 2736 (By Taylor), Relating to the exclusion of certain employees from small employer health benefit plans.

To Insurance.

HB 2737 (By Taylor), Relating to FAIR Plan (Fair Access to Insurance Requirements) Act.

To Insurance.

HB 2738 (By Taylor), Relating to regulation of wild animals by counties and certain other authorities.

To County Affairs.

HB 2739 (By Taylor), Relating to authorizing premium discounts for certain motor vehicle insurance policies.

To Insurance.

HB 2740 (By Deshotel), Relating to the collection of ethnicity information from Asian applicants for admission to a public institution of higher education.

To Higher Education.

HB 2741 (By J. Jones), Relating to incineration of hazardous waste as fuel in cement plants in certain areas of this state.

To Environmental Regulation.

HB 2742 (By J. Jones), Relating to incineration of hazardous waste as fuel in cement plants.

To Environmental Regulation.

HB 2743 (By Dawson), Relating to adjusting the service area of the Alvin Community College District.

To Higher Education.

HB 2744 (By Dawson), A bill to adjust the service areas of the Alvin Community College District and the Brazosport Community College District.

To Higher Education.

HB 2745 (By Turner), Relating to the review and approval by the General Land Office of energy acquisition contracts entered into by certain public retail customers.

To Energy Resources.

HB 2746 (By Turner), Relating to permissible conditions of community supervision for certain defendants convicted of an alcohol-related offense.

To Criminal Jurisprudence.

HB 2747 (By F. Brown), Relating to the issuance of license to a provisional license holder.

To Public Health.

HB 2748 (By F. Brown), Relating to the magistrates in Brazos County.

To Judicial Affairs.

HB 2749 (By Solis), Relating to limiting the liability of physicians and health care providers for health care provided on behalf of certain health services districts.

To Civil Practices.

HB 2750 (By Solis), Relating to the creation and funding of the child support oversight council.

To Juvenile Justice and Family Issues.

HB 2751 (By Hegar), Relating to the imposition of a civil penalty or a sanction on certain driving safety courses.

To Law Enforcement.

HB 2752 (By F. Brown), Relating to the creation of nonprofit corporations to refund outstanding student loan bonds.

To Higher Education.

HB 2753 (By Hartnett), Relating to contributions by and benefits for certain members and retirees under the Judicial Retirement System of Texas Plan One and the Judicial Retirement System of Texas Plan Two.

To Pensions and Investments.

HB 2754 (By Madden), Relating to legislative review and gubernatorial suspension of certain rules of state agencies.

To Government Reform.

HB 2755 (By Madden), Relating to public school finance.

To Public Education.

HB 2756 (By Burnam), Relating to compensation for the training of and for services rendered at a polling place by certain election officers and for an increase in filing fees to aid in providing that compensation.

To Elections.

HB 2757 (By Madden), Relating to contract entitlements of certain public school employees.

To Public Education.

HB 2758 (By Swinford), Relating to the use of fuel-saving technologies by certain state agency vehicles.

To Government Reform.

HB 2759 (By Wong), Relating to authorizing the issuance of revenue bonds for The University of Texas M.D. Anderson Cancer Center for biotechnology research and development facilities.

To Higher Education.

HB 2760 (By Crabb), Relating to the elimination of the 334th Judicial District in Harris County.

To Judicial Affairs.

HB 2761 (By Crabb), Relating to the disannexation of certain areas annexed on or after December 1, 1996, by certain municipalities.

To Land and Resource Management.

HB 2762 (By Garza), Relating to the functions of the Commission on Law Enforcement Officer Standards and Education.

To Law Enforcement.

HB 2763 (By Garza), Relating to the Texas public library endowment fund and funding for the TexShare library consortium program.

To State Cultural and Recreational Resources.

HB 2764 (By Garza), Relating to powers and duties of a municipal county authority.

To County Affairs.

HB 2765 (By Dukes), Relating to the purchase of certain wireless communication devices by state agencies.

To State Affairs.

HB 2766 (By Hardcastle), Relating to the permitting and collection of fees for Geophysical and Geochemical exploration on state property alongside Texas highways.

To Transportation.

HB 2767 (By Hardcastle), Relating to disclosure requirements for residential foundations in certain areas.

To Regulated Industries.

HB 2768 (By Woolley), Relating to facilitating and supporting the efforts of certain municipalities to promote economic development by hosting the Pan American Games, the Olympic Games, the Super Bowl, the NCAA Final Four, the NBA All Star Game, the MLB All Star Game, BCS Games, and World Cup Soccer Games, and events and activities related to any of the foregoing; authorizing certain municipalities and certain counties to issue notes for payment of obligations incurred to bid for, prepare for, and host any of the foregoing events.

To Economic Development.

HB 2769 (By Chisum), Relating to changing the composition of certain state agency governing bodies with an even number of members to comply with the changes made to Section 30a, Article XVI, Texas Constitution.

To State Affairs.

HB 2770 (By Isett), Relating to unexpected cash balances of the general revenue account.

To Ways and Means.

HB 2771 (By Howard), Relating to the acceleration of energy research and development.

To Economic Development.

HB 2772 (By Solomons), Relating to civil penalty for sales and use tax.

To Ways and Means.

HB 2773 (By Solomons), Relating to electronically readable information on a driver's license or personal identification certificate; providing penalties.

To Law Enforcement.

HB 2774 (By Solomons), Relating to the credits and debits of the subsequent injury fund.

To Business and Industry.

HB 2775 (By Solomons), Relating to the creation, division, or conversion of, or purchaser notice about, certain kinds of water districts.

To Natural Resources.

HB 2776 (By Hughes), Relating to the duration of a lien for the enforcement of child support arrearages.

To Juvenile Justice and Family Issues.

HB 2777 (By Hughes), Relating to pathology reports on abortions; providing a penalty.

To State Affairs.

HB 2778 (By Hughes), Relating to allowing certain off-site sales by motor vehicle dealers.

To Transportation.

HB 2779 (By Hilderbran), Relating to the issuance of general obligation bonds by the Parks and Wildlife Department for the Texas Park Development Fund.

To State Cultural and Recreational Resources.

HB 2780 (By Eiland), Relating to the creation of the offices of district attorney for the 75th and 344th judicial districts and the abolition of the office of district attorney for the 253rd Judicial District.

To Judicial Affairs.

HB 2781 (By Eiland), Relating to efforts by coastal counties to mitigate coastal erosion and improve public access to public beaches; authorizing the issuance of bonds by coastal counties.

To Land and Resource Management.

HB 2782 (By Eiland), Relating to certain limitations in health benefit plan coverage policies.

To Insurance.

HB 2783 (By Eiland), Relating to the withdrawal of an insurance company from a particular line of insurance.

To Insurance.

HB 2784 (By Eiland), Relating to allowing rural fire prevention districts to impose a sales and use tax.

To Local Government Ways and Means.

HB 2785 (By Eiland), Relating to the promotion of the shrimp industry of this state; and providing a source of funding.

To Agriculture and Livestock.

HB 2786 (By Eiland), Relating to an extension of a strategic partnership agreement between a special purpose district and certain municipalities.

To Natural Resources.

HB 2787 (By Eiland), Relating to Self-Insurance Trusts.

To Insurance.

HB 2788 (By Eiland), Relating to certain third-party claims against an employer by an injured employee.

To Business and Industry.

HB 2789 (By Edwards), Relating to a limitation on property owners' associations.

To Business and Industry.

HB 2790 (By Edwards), Relating to property owners and property owners' associations.

To Business and Industry.

HB 2791 (By Solis), Relating to the administration of the Texas Tech-Prep Program.

To Higher Education.

HB 2792 (By Flores), Relating to the use of electronic pull-tab minding devices or card-minding devices during a bingo occasion.

To Licensing and Administrative Procedures.

HB 2793 (By Flores and J. Davis), Relating to the regulation of roofing contractors; providing penalties.

To Licensing and Administrative Procedures.

HB 2794 (By Swinford), Relating to modification of exceptions to the diesel fuel tax.

To Ways and Means.

HB 2795 (By Riddle), Relating to the release on bond of certain persons arrested without a warrant.

To Criminal Jurisprudence.

HB 2796 (By Keel), Relating to the exercise of peremptory challenges based on race or gender.

To Criminal Jurisprudence.

HB 2797 (By Keel), Relating to tuition charged by an institution of public higher education for certain graduate programs.

To Higher Education.

HB 2798 (By Keel), Relating to authorizing the state auditor to commission investigators as peace officers.

To State Affairs.

HB 2799 (By Thompson), Relating to municipal courts of record.

To Judicial Affairs.

HB 2800 (By Thompson), Relating to amending the Medical Practice Act of Texas concerning reexaminations.

To Public Health.

HB 3162 (By Capelo), Relating to certain diseases or illnesses suffered by certain emergency first responders.

To Public Health.

SB 510 to Local Government Ways and Means.

HR 559 (By Dutton), Recognizing March 25, 2003, as a "Day of Innocence" in Texas.

To Criminal Jurisprudence.

SIGNED BY THE SPEAKER

The following bills and resolutions were today signed in the presence of the house by the speaker:

House List No. 17

HCR 87

MESSAGES FROM THE SENATE

The following messages from the senate were today received by the house:

Message No. 1

MESSAGE FROM THE SENATE

SENATE CHAMBER

Austin, Texas

Tuesday, March 25, 2003

The Honorable Speaker of the House

House Chamber

Austin, Texas

Mr. Speaker:

I am directed by the senate to inform the house that the senate has taken the following action:

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

SB 173 Nelson

Relating to deferred payment of property taxes for certain persons serving in the United States armed forces during a war or national emergency.

SB 494

Shapleigh

Relating to information provided by certain health benefit plans through the Internet.

SB 514

Lindsay

Relating to restricting the use of designated lanes of certain highways.

Respectfully,

Patsy Spaw

Secretary of the Senate

Message No. 2

MESSAGE FROM THE SENATE

SENATE CHAMBER

Austin, Texas

Tuesday, March 25, 2003 - 2

The Honorable Speaker of the House

House Chamber

Austin, Texas

Mr. Speaker:

I am directed by the senate to inform the house that the senate has taken the following action:

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

HCR 109

Lewis

SPONSOR: Madla

Recognizing March 25, 2003, as JPCA Day at the State Capitol.

SCR 17

Bivins

Recognizing the artists and arts patrons who are being honored at the Texas Medal of Arts Awards on March 25, 2003.

Respectfully,

Patsy Spaw

Secretary of the Senate

Message No. 3

MESSAGE FROM THE SENATE

SENATE CHAMBER

Austin, Texas

Tuesday, March 25, 2003 - 3

The Honorable Speaker of the House

House Chamber

Austin, Texas

Mr. Speaker:

I am directed by the senate to inform the house that the senate has taken the following action:

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

SB 304

Brimer

Relating to municipal officer and employee participation in state travel services contracts.

SB 361

Shapiro

Relating to the precedence of certain municipal highway access rules and ordinances over highway access management orders of the Texas Transportation Commission.

SB 437

Lindsay

Relating to the service area of the North Harris Montgomery Community College District.

Respectfully,

Patsy Spaw

Secretary of the Senate

Message No. 4

MESSAGE FROM THE SENATE

SENATE CHAMBER

Austin, Texas

Tuesday, March 25, 2003 - 4

The Honorable Speaker of the House

House Chamber

Austin, Texas

Mr. Speaker:

I am directed by the senate to inform the house that the senate has taken the following action:

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

SB 443

Wentworth

Relating to access to criminal history record information concerning volunteers with certain programs providing activities to children.

Respectfully,

Patsy Spaw

Secretary of the Senate

APPENDIX

STANDING COMMITTEE REPORTS

Favorable reports have been filed by committees as follows:

March 24

Civil Practices - **HJR 3**

Corrections - **HB 864, HB 1236, HB 1849**

Juvenile Justice and Family Issues - **HB 1364, HB 1536**
Transportation - **HB 1231**

ENROLLED

March 24 - HCR 87

SENT TO THE GOVERNOR

March 24 - HCR 126

SIGNED BY THE GOVERNOR

March 24 - HCR 20, HCR 29, HCR 30, HCR 105, HCR 106